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TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10146

EXEMPTION OF WILLIAM J. PATTERSON FROM COMPULSORY RETIREMENT FOR AGE

WHEREAS, in my judgment, the public interest requires that William J. Patterson, a member of the Interstate Commerce Commission, be exempted from compulsory retirement for age as provided below:

NOW, THEREFORE, by virtue of the authority vested in me by section 204 of the act of June 30, 1932, 47 Stat. 404 (5 U. S. C. 715a), it is ordered, effective as of July 1, 1950, that the said William J. Patterson be, and he hereby is, exempted from compulsory retirement for age under the provisions of the Civil Service Retirement Act of May 29, 1930, as amended, for an indefinite period of time not extending beyond the expiration of his present term of office as a member of the Interstate Commerce Commission: Provided, that, for the purposes of this order, his present term of office shall be considered as expiring upon the appointment and qualification of his successor.

HARRY S. TRUMAN

THE WHITE HOUSE,
August 2, 1950.

[F. R. Doc. 50-6899; Filed, Aug. 2, 1950; 4:48 p. m.]

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

PART 20—RETENTION PREFERENCE REGULATIONS FOR USE IN REDUCTIONS IN FORCE

MISCELLANEOUS AMENDMENTS

1. Under authority of § 6.1 (a) of Executive Order 9830, and at the request of the Economic Cooperation Administration, paragraph (d) of § 6.149 is amended as set out below, effective upon publication in the FEDERAL REGISTER.

§ 6.149 *Economic Cooperation Administration* * * *

(d) Not to exceed 30 positions at GS-12 or above when filled by persons who have served overseas with the Administration for not less than one year.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633. E. O. 9830, Feb. 24, 1947, 12 F. R. 1259; 3 CFR, 1947 Supp. E. O. 9973, June 28, 1948, 13 F. R. 3600; 3 CFR, 1948 Supp.)

2. Effective upon publication in the FEDERAL REGISTER, § 20.9 (b) is amended to read as follows:

§ 20.9 *Actions* * * *

(b) *Reassignments to continuing positions in local commuting area.* Reassignment is required in lieu of separation or furlough, within the local commuting area, without interruption to pay status whenever possible, to an available position for which the employee is fully qualified, unless a reasonable offer of reassignment is refused. No displacement will be required to permit the reassignment of an employee unless such employee is fully qualified to perform the duties of the position in question without undue interruption to the work program. Subject to these conditions, reassignment is required in each of the following cases:

(1) Any employee in any subgroup in group A, with competitive status in a position in the competitive service, if there is a position in the competitive service held by an employee in a lower subgroup.

(2) Any employee in subgroup A-1 or A-2, with competitive status in a position in the competitive service, who had previously been promoted, if there is a competitive service position, the same as the position from which he had been promoted, within the same competitive area (installation in the field service) held by an employee in the same subgroup with fewer retention credits.

(3) Any employee in subgroup B-1, in a position in the competitive service, if there is a competitive service position held by an employee in a lower subgroup.

(Secs. 11 and 19, 58 Stat. 390, 391; 5 U. S. C. 860, 868. Interprets or applies sec. 8, 54 Stat. 890, sec. 12, 58 Stat. 390, sec. 9, 62 Stat. 614; 50 U. S. C. App. 308, 459, 5 U. S. C. 861)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] HARRY B. MITCHELL,
Chairman.

[F. R. Doc. 50-6854; Filed, Aug. 3, 1950; 8:51 a. m.]

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THE PRESIDENT

EXECUTIVE AGENCIES

FEDERAL REGISTER

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TITLE 7—AGRICULTURE

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

PART 909—HANDLING OF ALMONDS GROWN IN CALIFORNIA

ORDER REGULATING HANDLING

AUTHORITY: §§ 909.0 to 909.161 issued under the authority of sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup., 608c.

§ 909.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 62 Stat. 1247; 63 Stat. 282, 1051; 7 U. S. C. 601 et seq.), and in accordance with the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR 900.1 et seq.) a public hearing was held at Sacramento, California, on March 14 through March 18, 1950, upon a proposed marketing agreement and a proposed marketing order regulating the handling of almonds grown in California. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) This order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) This order will be applicable only to persons in the respective classes of industrial and commercial activities specified in the proposals upon which the hearing was held;

(3) There are no differences in the production and marketing of said commodity in the production area covered by this order which make necessary different terms applicable to different parts of such area;

(4) The production area, as set forth in this order, is the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act; and

(5) The handling, as defined herein, of almonds grown in California is either in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary to have this program in effect for the coming crop year, and almonds of the 1950 crop will be ready for harvest about the middle of August. The control board must, after this program is put into effect, be selected, qualified, meet, and submit to the Secretary of Agriculture its estimations and recommendation with respect to the salable and surplus percentages for said crop year. In addition, the Secretary of Agriculture must consider such estimations and recommendation, as well as any other available pertinent data in his possession, in that regard and issue an appropriate order fixing such percentages. The completion of such actions by the indicated time will necessitate the prompt beginning of such actions. The nature and provisions of this regulation are well known to the handlers of almonds, since the public hearing was held in March 1950, and the recommended and final decisions were published in the FEDERAL REGISTER on June 9, 1950 (15 F. R. 3623) and July 6, 1950 (15 F. R. 4272), respectively. All known interested parties have received copies of the regulatory provisions. It is hereby found and determined, in view of these facts and circumstances, that good cause exists for making this order effective on the date of its publication in the FEDERAL REGISTER, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER (see section 4 (c) of the Administrative Procedure Act, 5 U. S. C. 1001 et seq.).

(c) *Determinations.* It is hereby determined that:

(1) A marketing agreement regulating the handling of almonds grown in California upon which the aforesaid public hearing was held, has been executed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping almonds covered by this order) who handled not less than 50 percent of the volume of such almonds covered by this order; and

(2) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the determined representative period (July 1, 1949, through June 30, 1950), produced almonds in California for market, such producers having also produced at least two-thirds of the volume of almonds represented in such referendum.

Order relative to handling. It is therefore, ordered that, on and after the effective time hereof, the handling of almonds grown in California shall be in conformity to, and in compliance with, the terms and conditions of said order, which are as follows:

DEFINITIONS

§ 909.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties hereunder of the Secretary of Agriculture of the United States.

§ 909.2 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 62 Stat. 1247; 63 Stat. 282, 1051; 7 U. S. C. 601 et seq.).

§ 909.3 *Person.* "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 909.4 *Almonds.* "Almonds" means (unless otherwise specified) all varieties of almonds (except bitter almonds), either shelled or unshelled, grown in the State of California in the initial crop year hereunder, and thereafter.

§ 909.5 *Unshelled almonds.* "Unshelled almonds" means almonds the kernels of which are contained in the shell.

§ 909.6 *Shelled almonds.* "Shelled almonds" is synonymous with the term "kernels" and means almonds after the shells are removed.

§ 909.7 *Major variety.* "Major variety" means any one of the following varieties of almonds: Nonpareil, IXL, Ne Plus Ultra, Peerless, Drake, Mission, and Jordanolo.

§ 909.8 *Similar variety.* "Similar variety" means any variety, other than a major variety, having characteristics closely resembling the particular major variety under consideration.

§ 909.9 *Dissimilar varieties.* "Dissimilar varieties" means any two or more varieties, one of which is a major variety or variety similar thereto and the other of which is another major variety or variety similar thereto.

§ 909.10 *Mixed varieties.* "Mixed varieties" means any lot of almonds which, in respect to the predominant variety in the lot, contains more than 17 percent by weight of dissimilar and similar varieties, and any such lot or any other lot which contains more than six percent by weight of a dissimilar variety or varieties.

§ 909.11 *Inedible kernel.* "Inedible kernel" is synonymous with "damaged kernel" and means an almond kernel or piece thereof (which will not pass through a round opening one-eighth inch in diameter) damaged in any one of the following ways: (a) Gumminess, when 25 percent or more of the surface area is covered by a waxy or resinous appearing substance; (b) insect or bird injury, when there is any evidence of, or injury by, insects or birds; (c) shriveling, seriously affecting 50 percent or more of the surface area or any shriveling, dark discoloration, or thinness producing an equally objectionable effect; (d) stains or dirt, when kernels have a dirty appearance caused by grease, mud, dirt, or other foreign substance; (e) mold, when there are light strands of white or grey mold affecting 10 percent or more of the surface area, or presence of other molds; (f) rancidity, when the kernel oil is partially oxidized producing a rancid taste or odor or the inside of the kernel is yellowish or brownish in color; (g) damage by other means, when there is any damage from any other cause of seriousness equal to any of the above enumerated classes of damage. Pieces of kernels which will pass through a round opening one-eighth inch in diameter and are rancid, moldy, dirty, or otherwise equally objectionable shall also be classed as inedible. The foregoing specifications may be revised or amended by the Secretary, on recommendation of the control board.

§ 909.12 *Edible kernel.* "Edible kernel" is synonymous with "sound kernel" and means an almond kernel or piece thereof which is not an inedible kernel.

§ 909.13 *Edible kernel weight.* "Edible kernel weight" means the weight of edible kernels contained in any lot of almonds, unshelled or shelled.

§ 909.14 *Almonds received for his own account.* "Almonds received for his own account" means all almonds which are received by a handler (including all almonds of his own production), except those which are received by him for storage or processing for the account of any other person and with respect to which such handler performs no handling function.

§ 909.15 *Area of production.* "Area of production" means the State of California.

§ 909.16 *Grower.* "Grower" is synonymous with "producer" and means any person engaging, in a proprietary capacity, in the commercial production of almonds.

§ 909.17 *Handler.* "Handler" means any person handling almonds during any crop year, except that such term shall not include a grower who sells only almonds of his own production at retail at a roadside stand operated by him.

§ 909.18 *Cooperative handler.* "Cooperative handler" means any handler which is a cooperative marketing association of growers regardless of where or under what laws it may be organized.

§ 909.19 *Pack.* "Pack" means any commercially recognized classification of almonds according to variety, size, quality, appearance, and condition.

§ 909.20 *To process.* "To process" means to bleach, clean, grade, shell, halve, package, or otherwise prepare in any manner whatsoever almonds for market as unshelled or raw shelled almonds, except as a grower in preparation for delivery of his own almonds to a handler.

§ 909.21 *To manufacture.* "To manufacture" means to blanch, slice, dice, roast, or otherwise prepare products from raw shelled almonds.

§ 909.22 *To handle.* "To handle" means to sell, consign, transport, ship (except as a common carrier of almonds owned by another person), or in any other way to put into the channels of trade either within the area of production or from such area to points outside thereof, except that such sales or deliveries by growers to a handler within the area of production shall not be considered as handling.

§ 909.23 *Inspection agency.* "Inspection agency" means either that inspection service on almonds which is performed by the United States Department of Agriculture under a cooperative arrangement with a State pursuant to authority contained in any act of Congress, which service is generally known as the Federal-State Inspection Service, or that inspection service on almonds which service is performed independently by the United States Department of Agriculture, which is generally known as the Federal Inspection Service, except that the term shall mean the Federal-State Inspection Service in the absence of a specific, and unrevoked, designation, by the Secretary, of the Federal Inspection Service as the inspection agency hereunder.

§ 909.24 *Settlement weight.* "Settlement weight" means the actual gross weight of any lot of almonds received for his own account by any handler, less adjustments as follows:

(a) For weight of containers;

(b) For excess moisture content;

(c) For trash and other foreign material of any kind; and

(d) For inedible kernel content.

§ 909.25 *Crop year.* "Crop year" means the 12 months from July 1 to the following June 30, both inclusive: *Provided*, That the initial crop year hereunder shall begin on the effective date hereof.

§ 909.26 *Handler carryover.* "Handler carryover" as of any given date means all almonds (except almonds held as surplus) wherever located, then held by handlers or for their accounts (whether or not sold), not including any manufactured products.

§ 909.27 *Trade demand.* "Trade demand" means the quantity of almonds which the wholesale, chain store, confectionery, bakery, ice cream, and nut salting trades will acquire from all handlers during a crop year for distribution in continental United States, Alaska,

Hawaii, Puerto Rico, and the Canal Zone.

§ 909.28 *Control board.* "Control board" is synonymous with "board" and means the Almond Control Board established by this subpart.

§ 909.29 *Part and subpart.* "Part" means the order regulating the handling of almonds grown in the State of California, and all rules, regulations, and supplementary orders issued thereunder, and the aforesaid order shall be a "subpart" of such part.

ALMOND CONTROL BOARD

§ 909.40 *Establishment.* A control board of ten members, with an alternate member for each such member, is hereby established.

§ 909.41 *Membership representation.* Two members and an alternate for each member shall be selected from nominees submitted by each of the following groups designated in paragraphs (a) through (d) of this section, or from among other qualified persons belonging to such groups; and one member and an alternate member shall be selected from nominees submitted by each of the following groups designated in paragraphs (e) and (f) of this section, or from among other qualified persons belonging to such groups:

(a) The cooperative handlers;

(b) All handlers, other than cooperative handlers;

(c) Those growers who market their almonds through cooperative handlers;

(d) Those growers who market their almonds through other than cooperative handlers;

(e) The group of cooperative handlers or the group of handlers other than cooperative handlers whichever during that part of the then current crop year through March 31 received for their own accounts more than 50 percent of the almonds delivered by growers: *Provided,* That the group in this category for the selection of original members shall be the group of cooperative handlers; and

(f) Those growers whose almonds were marketed during that period of the then current crop year through March 31, through the handler group specified in paragraph (e) of this section.

§ 909.42 *Selection of original members.* The original members and their respective alternates shall hold office for a term ending with the second Monday in June, 1951, and until their successors shall be selected and shall qualify, and shall be selected by the Secretary from each of the six groups specified in § 909.41. The nominating procedure prescribed in § 909.43 (a) shall not be followed for the selection of the initial control board.

§ 909.43 *Successor members*—(a) *Nominations.* Nominations for successor members and alternate members for each of the six groups specified in § 909.41 shall be made by that group. The nominations for each such group shall be submitted on the basis of ballots, which shall be mailed by the control board, in the case of each such group, to all members of which it has a record, and the board shall also make such ballots available upon request. Every such ballot shall contain the names of the then incumbent members and alternate members of the board representing the particular group, listed separately, and it shall also contain blank spaces for use by voters in writing in the names of any persons other than those listed for whom they might desire to vote. In addition, the ballots for use by growers who market their almonds through other than cooperative handlers shall contain the name of any other person who has been proposed as a nominee for the particular position in a petition, signed by at least 15 of such growers, which had been submitted to the board. Previous announcements of every such balloting, regardless of whether by handlers or by growers, will be made by press releases through the United States Department of Agriculture to the newspapers and other publications having general circulation in the almond producing areas in California, furnishing pertinent information with respect to such balloting. The control board shall furnish, along with each ballot, all information needed for voting purposes.

In cases of voting by handlers (regardless of whether cooperative or other than cooperative), the vote of each handler shall be weighted by the volume of the tonnage of almonds (computed to the nearest whole ton in the case of fractions), in terms of edible kernel weight, recorded by the control board as having been received by the particular handler for his own account during the period through March 31 of the crop year in which the nominations are made. Each handler shall cast his vote as to his respective choices for the number of member positions to be filled and for the number of alternate member positions to be filled. The nominees for the respective member positions shall be the persons receiving, in order, the highest number of the votes cast by all handlers in the group for those positions for that group which are to be filled. Likewise, the nominees for the respective alternate member positions shall be the persons receiving, in order, the highest number of votes cast by all handlers in the group for those positions which are to be filled. The handler group which is determined to be eligible for additional representation on the board as the group which received more than 50 percent of the almonds delivered by growers through March 31 of the crop year in which the nominations are made, which group is referred to and described in paragraph (e) of § 909.41, shall nominate the persons to represent it in that group in the same manner as it nominates its other representatives. Similar provisions shall be applicable to voting by growers who market their almonds through cooperative handlers, except that nominations on their behalf shall be submitted by the appropriate cooperative handler on the basis of a ballot cast by it for the growers who are members of, or under contract with, such cooperative handler, and such ballot shall be weighted by the number of growers who are members of, or under contract with, such cooperative handler.

In cases of voting by growers who market their almonds through other than cooperative handlers, each grower shall have only one vote, and every vote shall have equal weight. The nominees for the respective member positions for that group shall be the persons receiving, in order, the highest number of the votes cast by all such growers for those positions. Likewise, the nominees for the respective alternate member positions for such group shall be the persons receiving, in order, the highest number of the votes cast by all such growers for those positions. In the event such group should be determined to be eligible for additional representation on the board as the group of growers whose almonds were marketed through March 31 of the crop year in which the nominations are made through the handler group which received more than 50 percent of the almonds delivered by all growers to all handlers during that period, which grower group entitled to additional representation is referred to and described in paragraph (f) of § 909.41, it should nominate the persons to represent it in that group in the same manner as it nominates its other representative on the board.

Nominations received in the foregoing manner by the control board shall be reported to the Secretary on or before May 20 of each crop year, together with a certificate of all necessary tonnage data and other information deemed by the board to be pertinent or requested by the Secretary. If such nominations of any group are not submitted as hereinbefore provided to the Secretary on or before May 20 of any year the Secretary may select representatives of that group, without nomination.

(b) *Selection.* The successors of the original members and their respective alternates shall be selected annually by the Secretary for a term of one year beginning with the first Tuesday after the second Monday in June, and shall serve until their respective successors shall be selected and shall qualify.

§ 909.44 *Qualification.* Any person selected as a member or alternate of the control board, shall qualify by filing a written acceptance of his appointment with the Secretary or his designated representative. Any member or alternate who, at the time of his selection, was a member of or employed by a member of the group which nominated him shall, upon ceasing to be such member or employee, become disqualified to serve further and his position on the control board shall be deemed vacant.

§ 909.45 *Alternates.* An alternate for a member of the control board shall act in the place and stead of such member (a) in his absence, or (b) in the event of his death, removal, resignation or disqualification, until a successor for his unexpired term has been selected and has qualified.

§ 909.46 *Vacancy.* To fill any vacancy occasioned by the death, removal, resignation or disqualification of any member or alternate of the control board, a successor for his unexpired term shall be selected as soon as practicable in the

manner provided in § 909.43, so far as applicable.

§ 909.47 *Expenses.* The members of the control board shall serve without compensation, but shall be allowed their necessary expenses.

§ 909.48 *Powers.* The control board shall have the following powers:

(a) To administer the provisions hereof in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions hereof;

(c) To receive, investigate and report to the Secretary complaints of violations hereof; and

(d) To recommend to the Secretary amendments hereto.

§ 909.49 *Duties.* The control board shall have, among other things, the following duties:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall be subject to examination by the Secretary at any time;

(c) To investigate the growing, shipping, and marketing conditions with respect to almonds and to assemble data in connection therewith;

(d) To furnish to the Secretary such available information as may be deemed pertinent or as he may request;

(e) To appoint such employees as it may deem necessary and to determine the salaries, define the duties and fix the bonds of such employees; and

(f) To cause the books of the control board to be audited by one or more competent certified public accountants at least once for each crop year, and at such other times as the control board may deem necessary or as the Secretary may request; and the report of each such audit shall show, among other things, the receipt and expenditure of funds pursuant hereto; and to file with the Secretary three copies of all audit reports made.

§ 909.50 *Procedure*—(a) *Organization and rules.* The members of the control board shall select a chairman from their membership. The board shall select such other officers and adopt such rules for the conduct of its business as it may deem advisable. The board shall give to the Secretary or his designated agent and representatives the same notice of meetings of the control board as is given to members of the board.

(b) *Quorum.* All decisions of the control board, except where otherwise specifically provided, shall be by a majority vote of the members present. The presence of six members shall be required to constitute a quorum.

(c) *Permissive method of voting.* The control board may vote by mail or telegram upon due notice to all members including in the notice to each a statement of a reasonable time in which a vote by mail or telegram must be received for counting: *Provided*, That voting by mail or telegram shall not be permitted at any assembled meeting of the board. When any proposition is submitted for voting by mail or telegram, one dissenting vote shall prevent its adoption by that method.

(d) *Right of the Secretary.* The members of the control board (including successors or alternates), and any agent or employee appointed or employed by the control board, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the control board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SURPLUS CONTROL

§ 909.60 *General.* In order to effectuate the declared policy of the act, no handler shall handle almonds except in accordance with the terms and conditions of this part.

§ 909.61 *Withholding surplus.* When a surplus percentage has been fixed for any crop year, as hereinafter provided, no handler shall handle almonds except on condition that he comply with the requirements in respect to withholding surplus almonds and the prescribed disposition thereof.

§ 909.62 *Method of establishing salable and surplus percentages.* Whenever the Secretary finds from the recommendations and supporting information supplied by the control board or from any other available information, that to designate the percentages of almonds during such crop year which shall be salable almonds and surplus almonds, would tend to effectuate the declared policy of the act, he shall designate such percentages. The salable and surplus percentages shall each be applied to the edible kernel weight of almonds received by a handler for his own account during the crop year, as provided in § 909.65. In fixing such salable and surplus percentages the Secretary shall give consideration to the ratio of the estimated trade demand, minus the estimated handler carryover, to the estimated production of almonds, all expressed in terms of edible kernel weight, the recommendations submitted to him by the control board, and such other data as he deems appropriate. The total of the salable and surplus percentages fixed each crop year shall equal 100 percent.

§ 909.63 *Increase of salable percentage.* The Secretary may, on request of the control board made at any time prior to May 15 of any crop year (or if the control board shall fail to so request, upon the request within like time of two or more handlers who have handled during the immediately preceding crop year at least 15 percent of the total tonnage, in terms of edible kernel weight, handled by all handlers during such crop year), and after findings of facts based upon such revised and current information as may be pertinent that the almonds available for handling will not be sufficient to supply the trade demand, increase the salable percentage to conform with such new relation as may be found to exist between trade demand and available supply.

§ 909.64 *Board estimates and recommendations.* To aid the Secretary in fixing the salable and surplus percentages, the board shall furnish to the Secretary, not later than August 1 of each crop year (except, for the initial crop year hereunder, such submission shall be made not later than 15 days after the effective date hereof), the following estimates, expressed in terms of edible kernel weight, and recommendation, each of which shall be adopted by the affirmative vote of at least six members:

(a) Its estimate of the quantity of almonds to be produced during such year;

(b) Its estimate of handler carryover as of July 1, regardless of the crop year in which the almonds were produced;

(c) Its estimate of the total trade demand taking into consideration economic conditions and the anticipated market price, within the limitations of the act; and

(d) Its recommendation as to the salable and surplus percentages to be fixed.

The board shall also furnish to the Secretary a complete report of the proceedings of the board meeting at which the recommended salable and surplus percentages to be fixed by the Secretary were adopted. If, for any reason, the board fails to make these estimates or to recommend to the Secretary salable and surplus percentages as required hereby, reports representing the respective views of each member with respect to such matters shall be submitted to the Secretary and the Secretary may act on the basis of such reports or such other information as may be available to him.

§ 909.65 *Surplus obligation*—(a) *Requirement for withholding.* Except as otherwise provided in §§ 909.66 and 909.68, every handler shall withhold from handling a quantity of almonds having an edible kernel weight equal to the surplus percentage of the edible kernel weight of all almonds such handler receives for his own account during the crop year: *Provided*, That this provision shall not apply to any lot of almonds for which the surplus obligation has been met by a previous holder and the handler receiving such almonds makes a report thereof to the control board accompanied by a certification from the previous holder that the surplus obligation for such almonds has been met. Such almonds so withheld shall be set aside and thereafter kept for the account of the control board and, from the date of withholding, and at all times thereafter, shall be kept by the handler available for inspection by the control board or its agents. Such almonds shall be stored in such manner as to maintain them in the same condition as when certified as surplus, except for loss through fire, acts of God, acts of war, riot or other conditions beyond the handler's control. Upon demand of the control board they shall be delivered to the board f. o. b. handler's warehouse or point of storage, except that the control board shall not make such demand upon a handler prior to April 1, with respect to surplus almonds for which the handler has filed a bond, as

provided for in § 909.66, which bond is in force and effect. All such surplus almonds so withheld by the handler shall be, at the time of withholding, placed by the handler at his expense in suitable containers which may be prescribed by the control board and following inspection shall be identified by appropriate seals or stamps and tags to be furnished by the board and to be affixed to the containers by the handlers under the direction and supervision of the control board. In the event adequate records are not available at any time to show all almonds received by a handler during a crop year, or any part thereof, the surplus obligation of such handler in respect to almonds handled by him shall be a quantity of almonds having an edible kernel weight equal to the withholding percentage of the edible kernel weight of all the almonds theretofore handled by such handler during the crop year. Such withholding percentage shall be the ratio, measured as a percentage, of the surplus percentage to the salable percentage. The quantity of almonds hereby required to be withheld shall constitute, and may be referred to as, the "surplus" or "surplus obligation" of a handler. The almonds handled by any handler in accordance with the provisions of this part shall be deemed to be that handler's quota fixed by the Secretary within the meaning of section 8 (a) (5) of the act.

(b) *Grade requirement for surplus.* Lots of almonds to be eligible for certification as surplus must meet the following requirements, and only edible kernel weight in such lots shall be credited as surplus: (1) They shall be dry and properly cured; (2) unshelled almonds shall not be affected by adhering hulls (where more than ten percent of the surface is affected) on more than five percent by count; shall contain no more than two percent by weight of loose shells, hulls and other foreign material; and not more than ten percent by count of the kernels shall be inedible; and (3) shelled almonds shall not contain, in the aggregate, more than five percent by weight of loose hulls, shells, other foreign material, inedible kernels, and material of any kind which will pass through a round opening one-eighth inch in diameter. The requirements of this paragraph may be revised or amended by the Secretary upon the recommendation of the control board.

§ 909.66 *Postponement of surplus obligation upon filing bond*—(a) *Privilege.* Compliance by any handler with the requirements of § 909.65 as to the time when surplus almonds shall be withheld shall be deferred to any date desired by the handler but not later than March 31 of the crop year, upon the voluntary execution and delivery by such handler to the control board, before he handles any almonds of such crop year, of a written undertaking that on or prior to such date he will have fully satisfied his surplus obligation required by said § 909.65.

(b) *Bond requirement.* Such undertaking shall be secured by a bond or bonds to be filed with and acceptable to the control board, and with a surety or sureties acceptable to the control board, in the amount or amounts stated below conditioned upon full compliance with such undertaking. Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the handler's deferred surplus obligation. The bonding value shall be the total deferred surplus obligation of the handler in pounds multiplied by the bonding rate established pursuant to paragraph (c) of this section. The cost of such bond or bonds shall be borne by the handler filing the same.

(c) *Bonding rate.* Said bonding rate shall be based upon the then current season's domestic price per pound for shelled almonds generally known in the trade as "Nonpareil Medium" and shall be computed at 90 percent of the weighted average domestic price f. o. b. shipping point for the then current crop year at which such pack was sold during the first 15 days following announcement of opening prices, by any handler or handlers who during the preceding crop year handled 51 percent of the almonds handled by all handlers. Such handler or handlers shall be selected in order of volume handled in the preceding crop year, using the minimum number of handlers to represent a volume of 51 percent of the total volume handled. If the price from two or more handlers is involved for the designated pack, the price so computed shall be averaged on the basis of the quantity of such designated pack handled during the preceding crop year by each such handler. Handlers whose prices are to be used as aforesaid shall furnish the board with information necessary to compute the bonding rate. Until the bonding rate is fixed for the first crop year ending June 30, 1951, the bonding rate shall be 38.5 cents per pound.

(d) *Description of Nonpareil Medium.* "Nonpareil Medium" is the shelled product of a major variety of almonds produced in California known as Nonpareil. It has the following specifications: fairly uniformly graded kernels of the Nonpareil variety generally counting 22 to 24, 23 to 25, or 24 to 26 kernels to an ounce, consisting of whole unchipped almond kernels (whole kernels having chips not exceeding one-eighth inch in diameter or cuts and scratches one-sixteenth inch wide by three-eighths inch long shall not be classified as chipped kernels) with not more than ten percent by count of whole kernels having larger chips or cuts and scratches than above defined, not more than five percent by weight of double (twin) kernels, not more than one-half of one percent of broken kernels or pieces (less than seven-eighths of a whole kernel), and less than one percent by weight of inedible kernels, all of which are well dried, clean, and free (less than one-tenth of one percent) from pieces of shell, hull, or other foreign material.

(e) *Replacement by control board.* Any sums collected through default of a handler on his bond shall be used by the control board to purchase from handlers, as provided herein, a quantity of almonds not to exceed the total quantity represented by the sums collected. Purchases shall be made from the salable percentages with respect to which the surplus obligation has been met. If a larger quantity is offered than can be purchased the purchases shall be made in such pack or packs as the board considers most desirable to acquire for purposes of surplus disposal, at the lowest prices at which such pack or packs are offered. The purchases shall be made from the various handlers as nearly as practicable in proportion to the quantity of their respective offerings (at the same price) of the pack or packs to be purchased.

(f) *Disposition of excess funds.* Any unexpended sums, which have been collected by the control board through default of a handler on his bond, remaining in possession of the control board at the end of a crop year shall be used to reimburse the board for its expense, including administrative and other costs, incurred in the collection of such sums and in the purchase of almonds as provided in paragraph (e) of this section. Any balance remaining after reimbursement of such expenses shall be distributed as follows: In case purchases have been made of a poundage equal to that on which the default occurred, distribution shall be made only to the defaulting handler and in case the board is unable to purchase a poundage of almonds as large as that on which the default occurred, distribution shall be made among all handlers, other than the defaulting handler, in proportion to the ratio of each such handler's surplus obligation to the total surplus obligation of all such handlers for the crop year in which the default occurred. A handler who has defaulted on his bond shall be credited on his surplus obligation with that quantity of almonds represented by the sums collected on account of such default.

§ 909.67 *Payment to handlers for services rendered.* The control board may pay handlers for necessary services rendered by handlers in connection with almonds eventually disposed of as surplus including but not limited to storing, shelling, sorting, bleaching, grading, packaging, fumigating, and other services, in accordance with the schedule of payments specified in Appendix 1 (§§ 909.151 to 909.154, inclusive), or such amended or additional schedules as may be established by the Secretary which may be based upon the recommendation of the control board.

§ 909.68 *Inter-handler transfer of surplus.* For the purpose of meeting his surplus obligation, any handler may, upon notice to, and under the supervision and direction of the control board, acquire from another handler almonds with respect to which the surplus has not been withheld and any surplus obligation of the seller with respect to any almonds so transferred shall be waived, and shall be transferred to the buying handler. If any such sales were made of almonds on which the surplus obligation has been met, the seller's surplus obligation shall be reduced accordingly when the purchaser has had such almonds or a like quantity of almonds certified to the control board as surplus.

§ 909.69 *Assistance of control board in accounting for surplus.* The control board, on written request, may assist handlers in accounting for their surplus obligations and may aid any handler in acquiring almonds to meet any deficiency in a handler's surplus.

§ 909.70 *Application of salable and surplus percentages after end of crop year.* The salable and surplus percentages established for any crop year shall continue in effect with respect to all almonds for which the surplus obligation has not been previously met, which are received for his own account or handled by any handler after the end of such crop year and before salable and surplus percentages are established for the succeeding crop year. After such percentages are established for the new crop year, the withholding requirements for all such almonds theretofore received for his own account or handled during that crop year shall be adjusted to the newly established percentages.

§ 909.71 *Application of bonding rate after end of crop year.* The bonding rate established for any crop year shall continue in effect with respect to any bond or bonds executed and delivered pursuant to § 909.66 before the bonding rate for the new crop year is established. After such bonding rate is established for the new crop year, the new rate shall be applicable and any bond or bonds theretofore given for that crop year shall be adjusted to the new rate.

§ 909.72 *Exchange of surplus almonds.* Any handler who has withheld surplus almonds pursuant to the requirements of § 909.65 and has had the same certified as surplus almonds may exchange therefor, to the extent that such almonds have not been disposed of, an equal quantity, by edible kernel weight, of other almonds. Any such exchange shall be made under the supervision and direction of the control board with appropriate inspection and certification of the almonds involved.

§ 909.73 *Adjustment upon increase of salable percentage.* Upon any increase in the salable percentage and corresponding decrease in the surplus percentage, the surplus obligation of each handler for the entire crop year to the effective date of such action shall be recomputed in accordance with such revised salable and surplus percentages. From the surplus almonds that may have been withheld by him and not yet disposed of, any handler authorized to act and acting as agent of the board in disposing of surplus pursuant to § 909.102 shall be permitted to select, under the supervision and direction of the control board, the particular surplus almonds to be restored to his salable percentage, and such restoration shall be deemed to fulfil the obligation of the board with respect to such increase.

In the case of handlers who have not been authorized to dispose of their own surpluses, and handlers who have terminated their agencies to dispose of their own surpluses, prior to an increase in the salable percentage, insofar as practicable each such handler shall be permitted to select almonds from his own surplus to be restored to his salable quantity. In the event there are not sufficient surplus almonds held by the board at the time the salable percentage is increased, to make full restoration as represented by the increase in the salable percentage, to all such handlers, the restoration to the salable quantities of the respective handlers shall be pro rata on the basis of edible kernel weight poundage of surplus contributed by said handlers during the crop year to the date of increase of the salable percentage. However, in case a handler who has been authorized to act as agent in disposing of his surplus, has terminated such agency as of April 1, and the salable percentage is increased after such termination, the restoration to said handler's salable quantity shall not exceed the quantity of surplus turned back to the board by him at the expiration of his agency, plus any surplus which he may have contributed after termination of his agency. Such restoration to the salable quantity shall be deemed to fulfil the obligation of the board with respect to the increase in the salable percentage.

RECORDING RECEIPTS, INSPECTION, AND CERTIFICATION

§ 909.80 *Record of receipts.* For the purpose of establishing the surplus obligation and furnishing statistical information to the control board necessary for the conduct of its operations, each handler, on receiving almonds for his own account, shall issue to the person from whom so received a receipt therefor. At least two duplicates thereof shall be made at the time of issuance, one of which shall be retained by the handler as a part of his records and the other submitted to the control board as hereinafter provided. Such receipts shall be serially numbered and shall accurately show for each lot received, the identity of the handler, the name and address of the person from whom received, the number of containers in the lot, the variety, whether shelled or unshelled, and the settlement weight for each such variety. The character and amount of all adjustments deducted from the gross weight shall be shown with the gross weight on the receipt issued by the handler.

§ 909.81 *Report of receipts.* Each handler receiving almonds for his own account shall tabulate such receipts by varieties and shall submit reports thereof to the control board in such form and at such intervals as the board may prescribe for all receipts issued by him. Such reports shall be accompanied by duplicate copies of the receipts issued pursuant to the provisions of § 909.80 for all almonds included in such report. The control board, after checking such reports in such manner as it deems desirable, shall determine in the manner specified in § 909.82 the edible kernel weight of the almonds so received.

§ 909.82 *Determination of edible kernel weight*—(a) *Almonds for which settlement is made on kernel weight.* All lots of almonds, whether shelled or unshelled, for which settlement is made on the basis of kernel weight shall be included in the total edible kernel weight for any handler at the settlement weight.

(b) *Unshelled, known varieties.* Any unshelled almonds of known varieties for which settlement is made on the basis of unshelled weight shall be included in the total edible kernel weight for any handler at the settlement weight of such unshelled almonds of each known variety multiplied by the varietal shelling ratio applicable to such variety. Such varietal shelling ratios shall be those shown in Appendix 2 (§ 909.161). Such Appendix 2 may be revised or amended by the Secretary on recommendation of the control board and when so revised or amended in any crop year, unless otherwise directed by the Secretary, shall be applied to all almonds of known varieties received during that crop year.

(c) *Unshelled, mixed, and unknown varieties.* All lots of unshelled almonds for which settlement is made on the basis of unshelled weight, consisting of mixed varieties or of varieties which are unknown or not shown on the handler's reports or on the receipts issued by the handler, shall be included in the total edible kernel weight for any handler at the actual weight of the unshelled almonds multiplied by a shelling ratio of 55 percent unless the handler, at the time of the receipt of any such lot obtains at his own expense an inspection of such lot by an inspection agency. In the event of such an inspection, the edible kernel weight of such lot of almonds as shown by such inspection shall be used. When such an inspection is made, a copy of the inspection report shall be attached to the copy of the grower receipt for such lot submitted by the handler to the control board as part of his report specified in § 909.81.

§ 909.83 *Redetermination of edible kernel weight.* The control board, on the basis of reports by handlers as required in §§ 909.111 through 909.115 together with its records of almonds certified as surplus, shall redetermine the edible kernel weight of all almonds received by the respective handlers for their own accounts during the respective crop year (and on which surplus has not been contributed by a previous handler) through each of the following dates: December 31, March 31, and June 30. In determining the edible kernel weight of salable unshelled almonds on which delivery has been effected as reported under provisions of § 909.112 or in the carryover as reported under provisions of § 909.111 the shelling ratios specified in § 909.82 shall be used. The weight of salable shelled almonds on which delivery has been effected, the weight of kernels used by the handler for manufactured products, and the weight of shelled almonds in the carryover shall be used in determining the edible kernel weight of shelled almonds. The edible kernel weight of certified surplus as determined at time of certification shall be used with respect to such surplus. If upon the foregoing computations of the total edible kernel weight of almonds received by a handler for his own account during a portion of the crop year or the entire crop year based on such reports made by the handler and such verifica-

tion thereof as the board or the Secretary makes as provided in § 909.114 the edible kernel weight is found to differ from that determined in the manner specified in § 909.82 appropriate adjustments shall be made in the recorded total edible kernel weight of almonds received by such handler for his own account, and such revised total, after taking into consideration any almonds which have contributed to surplus in the hands of a previous holder, shall be the basis for the determination of such handler's revised surplus obligation. The determination of the board based on the handlers' reports, the examination of their records, and the board's records of certified surplus shall be final. Such examination or audit of handlers' records as the board makes shall be at the board's expense and under uniform procedure.

§ 909.84 *Inspection and certification of surplus almonds.* It shall be the duty of each handler to cause an inspection to be made of all almonds withheld by him in satisfaction of his surplus obligation to determine whether such almonds meet the grade requirements specified in § 909.65 (b). Such inspection shall be made by the inspection agency, and the cost thereof shall be paid by the handler. A report of such inspection shall be issued which shall show, in addition to such other requirements as the control board may specify, the identity of the handler, the kind and number of containers in the lot and any brand or labels, the variety of almonds in the lot, whether shelled or unshelled, the weight of edible kernels contained in the lot, the weight of inedible kernels, if any, contained in the lot, and that such lot meets the grade requirements for surplus almonds. Copies of such reports shall be furnished to the handler and the control board.

DISPOSITION OF SURPLUS

§ 909.100 *Prohibition on the handling of surplus.* Except as provided in §§ 909.101 and 909.102 surplus almonds withheld pursuant to the requirements of § 909.65 shall not be handled by any person.

§ 909.101 *Conditions governing disposition of surplus*—(a) *General.* The control board shall have power and authority to sell or dispose of any and all surplus almonds withheld upon the best terms and at the highest return obtainable consistent with the ultimate complete disposition of surplus, subject to all conditions of this section.

(b) *Disposition of surplus for export.* Sales of surplus almonds for export to destinations outside the continental United States, Alaska, Hawaii, Puerto Rico, and the Canal Zone shall be made only on execution of an agreement to prevent sale within or reimportation into the United States; and in case of export to Canada or Mexico, such almonds shall be sold only on the basis of a delivered price, duty paid.

(c) *Exclusion from domestic normal trade channels.* No surplus almonds shall be sold in the United States, Alaska, Hawaii, Puerto Rico, and the Canal Zone other than to governmental agencies or to charitable institutions for charitable purposes, except for diversion into almond oil, almond butter, poultry or animal feed, or into other channels which the control board finds are noncompetitive with existing normal markets for almonds, and with proper safeguards in each case to prevent such almonds thereafter entering the channels of trade in such normal markets.

(d) *Time restriction on disposition.* The control board shall not dispose of, or authorize the disposition of, more than 50 percent of the surplus almonds prior to May 15 of any crop year unless disposition in excess of 50 percent is made pursuant to paragraph (b) of this section or unless the salable percentage is increased pursuant to § 909.63.

(e) *Disposition after August 1.* Any surplus almonds remaining unsold as of August 1 shall be disposed of by the board as soon as practicable through the most readily available outlets within the limitations of paragraph (c) of this section.

§ 909.102 *Disposition by handler.* Upon request of a handler, made prior to the delivery by him of any surplus to the board in any crop year, the board shall authorize such handler to act as agent of the board, upon such reasonable terms and conditions as the board may specify and subject to the conditions of § 909.101 in disposing of the surplus contributed by such handler for that crop year. Any handler who is authorized to dispose of his surplus may, through arrangement with another handler, dispose of such surplus through such other handler. In the latter instance, the second handler shall also be subject to the conditions of § 909.101. It shall be the obligation of any handler authorized to dispose of such surplus to effect disposition thereof in accordance with all applicable requirements and conditions. The proceeds of such disposition shall be retained by the handler making the disposition, except that, in case he disposes of the surplus of another handler, the proceeds from that disposition shall be divided between the two handlers on the basis of a mutual agreement. Such authorization shall expire as of August 1 of the next crop year, and any surplus then remaining undisposed of by the handler shall be returned to the board. Any handler who has been authorized to act as agent of the board in disposing of his surplus may terminate such agency as of April 1 of the particular crop year by giving written notice to the board to that effect not later than the previous March 20, in which event such handler shall return to the board, for disposition by it, all surplus almonds remaining in his possession. In case a handler does not terminate his agency as of April 1, he shall be required to continue to serve as such agent until August 1 of the next crop year. The board shall not terminate such an agency prior to August 1 unless the agent violates the terms and conditions specified by the board or other provisions of the order. During the period of such agency the board, as principal, shall not dispose of the surplus contributed by said agent.

§ 909.103 *Disposition of proceeds from sales of surplus*—(a) *Pools.* Surplus from almonds received by handlers for their own accounts during any crop year, other than surplus disposed of by handlers as agents of the board as authorized in § 909.102, shall be disposed of by the control board in three pools as follows: Pool No. 1—surplus delivered to the board during a crop year up to April 1 and disposed of during that period; Pool No. 2—surplus delivered to the board from April 1 to July 31, inclusive, and disposed of during that period, including, in addition to deliveries by handlers not acting as agents, deliveries by handlers who terminate their agencies as of April 1, and also any surplus from Pool No. 1 which was not disposed of prior to April 1, but which is disposed of prior to August 1; and Pool No. 3—all surplus held unsold by the board on August 1, including, in addition to any surplus turned over to it by handlers whose agencies expired on August 1, any surplus from Pool No. 1 and Pool No. 2 which was not disposed of by the board prior to August 1.

(b) *Expenses.* Direct expenses incurred by the control board in the maintenance and disposition of surplus almonds in each respective pool shall be charged against the proceeds of sales of the almonds in that pool.

(c) *Distribution to handlers.* Net proceeds from the disposition of surplus almonds in each of the three pools shall be distributed by the board to each handler having an interest in that pool in proportion to his relative contribution thereto in terms of edible kernel weight. In the case of a carryover from one pool to another pool, the board shall allocate the interests of the appropriate handlers therein on the basis of their respective total deliveries of almonds, in terms of edible kernel weight, to the board during the pool period in connection with which such carryover first originated.

REPORTS, BOOKS, AND RECORDS

§ 909.111 *Reports of handler carryover.* On or before January 15, April 15, and July 15 of each crop year every handler shall file with the control board a written report, under oath, of his carryover of all almonds by variety, showing whether unshelled or shelled and the number and type of containers and weight as of December 31, March 31, and June 30, respectively.

§ 909.112 *Reports of almonds sold and delivered.* On or before January 15, April 15, and July 15 of each crop year every handler shall file with the control board a written report, under oath, of all his sales of almonds by variety, showing whether unshelled or shelled and whether salable or surplus, and the weight on which delivery has been effected during the crop year, as of December 31, March 31, and June 30, respectively, including therein any manufactured products (whether or not sold) at their equivalent in terms of raw shelled almonds.

§ 909.113 *Other reports.* Upon the request of the control board, made with the approval of the Secretary, every handler shall furnish to the control board in such manner and at such times as it prescribes (in addition to such other

reports as are specifically provided for in this part) such other information as will enable the control board to perform its duties and exercise its powers hereunder.

§ 909.114 *Verification of reports.* For the purpose of checking and verifying reports made by handlers to it, the Secretary or the control board through its duly authorized agents shall have access to the handler's premises wherever almonds may be held by such handler, and at any time shall be permitted to inspect any almonds so held by such handler and any and all records of the handler with respect to the holding or disposition of all almonds which may be held or which may have been disposed of by such handler. Every handler shall furnish all labor necessary to facilitate such inspections as the control board or the Secretary may make of such handler's holdings of any almonds.

§ 909.115 *Confidential information.* All reports and records furnished or submitted by handlers to the board which include data or information constituting a trade secret or disclosing of the trade position, financial condition, or business operations of the particular handler from whom received shall be received by and at all times kept in the custody and under the control of one or more employees of the board, who shall disclose such information to no person except the Secretary. Notwithstanding the above provisions of this paragraph, information may be disclosed to the board when necessary to enable the board to carry out its functions hereunder.

EXPENSES AND ASSESSMENTS

§ 909.120 *Expenses.* The control board is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the control board and for such purposes as the Secretary may, pursuant to the provisions hereof, determine to be appropriate. The recommendation of the control board as to the expenses for each such year, together with all data supporting such recommendation, shall be submitted to the Secretary on or before August 1 of the crop year in connection with which such recommendation is made: *Provided*, That if the program is not made effective early enough to permit making such recommendation prior to August 1 of the initial crop year such recommendation shall be submitted within 15 days after the effective date of this program. The funds to cover such expenses shall be acquired by levying assessments as hereinafter provided.

§ 909.121 *Assessments*—(a) *Requirement for payment.* Each handler shall pay to the control board on demand by the board, from time to time, the sum of two-tenths of a cent for each pound of edible almond kernels received by him for his own account (except as to receipts from other handlers on which assessments had been paid) after the effective date hereof. In the event adequate records are not available at any time to show all almonds received by a handler during a crop year, or any part thereof, and his surplus obligation is determined under the alternate provision of § 909.65 (a), the assessment herein specified shall be based upon such handler's total salable and surplus almonds measured by edible kernel weight. Upon redetermination of edible kernel weight of almonds received by handlers for their own account as provided in § 909.83, such redetermined edible kernel weight for each handler shall be the basis upon which he shall pay assessments at the aforesaid rate. At any time during or after a crop year, the Secretary may increase the rate of assessment to apply to all such almonds during such crop year to secure sufficient funds to cover the expenses authorized by § 909.120 or by any later finding by the Secretary relative to the expenses of the control board, and such additional assessments shall be paid to the control board by each handler on demand.

(b) *Refunds.* Any money collected as assessments during any crop year and not expended in connection with the respective crop year's operations hereunder may be used and shall be refunded by the control board in accordance with the provisions hereof. Such excess funds may be used by the control board during the period of four months subsequent to such crop year in paying the expenses of the control board incurred in connection with the new crop year. The control board shall, however, from funds on hand, including assessments collected during the new crop year, distribute or make available, within five months after the beginning of the new crop year, the aforesaid excess to each handler from whom an assessment was collected, as aforesaid, in the proportion that the amount of the assessment paid by the respective handler bears to the total amount of assessments paid by all handlers during said crop year.

(c) *Disposition of funds upon termination.* Any money collected from assessments hereunder and remaining unexpended in possession of the control board upon the termination hereof shall be distributed in such manner as the Secretary may direct.

MISCELLANEOUS PROVISIONS

§ 909.131 *Personal liability.* No member or alternate member of the control board, or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, agent, or employee, except for acts of dishonesty.

§ 909.132 *Separability.* If any provision hereof is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 909.133 *Derogation.* Nothing contained herein is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 909.134 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon its termination except with respect to acts done under and during its existence.

§ 909.135 *Agents.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions hereof.

§ 909.136 *Effective time, suspension, or termination*—(a) *Effective time.* The provisions hereof, as well as any amendments hereto, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways hereinafter specified in this section.

(b) *Suspension or termination*—(1) *Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions hereof, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(2) *When favored by growers.* The Secretary shall terminate the provisions hereof at the end of any crop year whenever he finds that such termination is favored by a majority of the growers of almonds who during that crop year have been engaged in the production for market of almonds in the State of California: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such almonds produced for market within said State; but such termination shall be effected only if announced on or before June 1 of the then current crop year.

(3) *If enabling legislation is terminated.* The provisions hereof shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination*—(1) *Designation of trustees.* Upon the termination of the provisions hereof, the members of the control board then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the control board, of all funds and property then in the possession or under the control of the board, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) *Duties of trustees.* Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the control board and the joint trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or

appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the control board or the joint trustees pursuant hereto.

(3) *Obligations of persons other than board members and trustees.* Any person to whom funds, property, or claims have been transferred or delivered by the control board or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said board and upon the said joint trustees.

§ 909.137 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination hereof or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision hereof or any regulation issued hereunder, or (b) release or extinguish any violation hereof or of any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.

§ 909.138 *Amendments.* Amendments hereto may be proposed, from time to time, by any person or by the control board.

APPENDIX 1—SCHEDULE OF PAYMENTS TO HANDLERS FOR SERVICES RENDERED IN CONNECTION WITH SURPLUS ALMONDS

[Rates are expressed in dollars per ton of 2000 lbs.]

§ 909.151 *Storage.* Handlers shall be paid for storing almonds beginning on the day on which any handler has surplus almonds certified and shall continue so long as the almonds are stored by the handlers for the control board. Cold storage shall be used only when specified by the control board. Payments per ton shall be as follows:

	First month	Per month thereafter
Dry storage:		
Unshelled	$2.90	$1.15
Shelled	1.75	.70
Cold storage:		
Unshelled	5.00	2.50
Shelled	7.00	3.00

These storage rates include piling, holding, and tearing down piles.

§ 909.152 *Fumigation.* Handlers shall be paid the actual cost of fumigating almonds, but not to exceed $1.00 per ton for unshelled and $.60 per ton for shelled almonds. Each such fumigation must be approved by the control board.

§ 909.153 *Packaging in new burlap bags.* Handlers must provide suitable containers for storing surplus almonds, but when the control board requires packaging in new burlap bags, handlers shall be paid for such packaging as follows:

Unshelled—actual cost of the burlap bags plus $2.00 per ton for labor; and

Shelled—actual cost of the burlap bags and liners plus $2.00 per ton for labor.

§ 909.154 *Processing costs.* The processing costs hereinafter enumerated shall be paid to handlers only when such work is authorized by the board. Handlers shall be paid their actual expenses for grading and bleaching unshelled almonds, but not to exceed $5.25 per ton. Handlers shall be paid the actual cost of shelling and sorting almonds but not to exceed $10.00 per ton of kernels for shelling the Nonpareil variety, $15.00 per ton of kernels for shelling any other variety, and $20.00 per ton for the sorting of any variety to produce a sheller run grade.

APPENDIX 2—VARIETAL SHELLING RATIOS APPLICABLE TO UNSHELLED ALMONDS

§ 909.161 *Varietal shelling ratios applicable to unshelled almonds.* The varietal shelling ratios applicable to unshelled almonds for determination of edible kernel weight are as follows:

Major varieties	*Percent*
Nonpareil	60
Jordanolo	60
Ne Plus Ultra	50
IXL	50
Mission	40
Drake	40
Peerless	35
Minor varieties	
King	60
California (California Papershell)	60
Princess	60
Bigelow	55
Harparell	55
Rivers	55
Eureka	54
Klondike	54
Baker	53
Trembath	53
Oakley	52
Silvershell	51
Long IXL	50
Harriott	50
Commercial	49
Frost Proof	49
Smith (Smith's XL)	48
Routier	48
La Marie	48
La Prima	48
Lewelling (Lewelling's Prolific)	47
Proctor	47
Barclay	47
Fairoaks	47
Batham	46
Reams	44
Sellers	43
Marcona	42
Queen	42
Jubilee	42
Walton	41
Gilt Edge	40
Standard	38
Golden State	33
French Languedoc (Cartagena)	37
Languedoc	37
Hampton	36
Sultana	36
La France	33
Tarragona	33
Philopena	32
Grosse Tender	32
Hardshell	30
Almendro	30
Bidwell	30
Jordan	30
King George	30

Issued at Washington, D. C., this 1st day of August 1950, to be effective on and after 12:01 a. m. P. s. t., August 4, 1950.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 50-6857; Filed, Aug. 3, 1950; 8:51 a. m.]

PART 940—HANDLING OF PEACHES GROWN IN COUNTY OF MESA, COLORADO

ORDER AMENDING ORDER REGULATING HANDLING

FINDINGS AND DETERMINATIONS

AUTHORITY: §§ 940.0 to 940.95 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup., 608c.

§ 940.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection

with the issuance of the aforesaid order; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein. (For original findings relative to issuance of Order No. 40, see F. R. Doc. 39-2965; 4 F. R. 3599.)

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the rules of practice and procedure effective thereunder (7 CFR, Part 900), a public hearing was held at Palisade, Colorado, beginning on March 8, 1950, upon proposed amendments to the marketing agreement and Order No. 40, effective August 15, 1939, regulating the handling of peaches grown in the County of Mesa in the State of Colorado. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order as hereby amended regulates the handling of peaches grown in the County of Mesa in the State of Colorado in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which hearings have been held; and

(3) There are no differences in the production and marketing of peaches grown in the production area covered by said order as hereby amended that make necessary different terms and provisions applicable to different parts of such area.

(b) *Additional findings.* It is hereby found and determined, on the basis hereinafter indicated, that good cause exists for making the provisions of this part effective not later than the date of publication in the FEDERAL REGISTER; and that it would be contrary to the public interest to postpone such effective date until 30 days after publication (60 Stat. 237; 5 U. S. C. 1001 et seq.). It is necessary, in the public interest, to make this part effective upon publication in the FEDERAL REGISTER, so as to facilitate, promote, and maintain orderly marketing of the peaches covered hereunder. Shipments of early varieties of Mesa County peaches will begin to be made in a limited way early in August and in volume soon thereafter. It is necessary, therefore, to make this part effective promptly so that regulations may be formulated and issued prior to the commencement of volume shipments. Thus, the benefits of the program will be available to producers and handlers throughout the marketing season of the 1950 crop. The provisions of this part are well known to handlers, the public hearing on the amendments having been held in Palisade, Colorado, beginning on March 8, 1950, and the recommended decision and final decision having been published on May 11 (15 F. R. 2804, 3038), and June 9, 1950 (15 F. R. 3647, 3811), respectively. Handlers and producers have received copies of the text of the amendatory order; and compliance with the provisions of this part will not require any advance preparation on the part of persons subject thereto that cannot be completed prior to such effective date.

(c) *Determinations.* It is hereby determined that: (1) The agreement, amending the marketing agreement regulating the handling of peaches grown in the County of Mesa in the State of Colorado, upon which the aforesaid public hearing was held, has been signed by handlers (excluding cooperative associations of producers who were not engaged in processing, distributing, or shipping the peaches covered by this order) who, during the period May 1, 1949, through April 30, 1950, shipped not less than 50 percent of the volume of peaches covered by said order as hereby amended;

(2) The aforesaid agreement, amending the said marketing agreement, has been executed by handlers who were signatory parties to said marketing agreement and who, during the preceding fiscal year, shipped not less than sixty-seven (67) percent of the peaches grown in the County of Mesa in the State of Colorado, shipped by all signatory handlers to said marketing agreement during such fiscal year;

(3) The issuance of this part, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the determined representative period (May 1, 1949, through April 30, 1950), have been engaged within the County of Mesa in the State of Colorado in the production of peaches for market; and

(4) The issuance of this part, amending the aforesaid order, is favored or approved by producers who, during said representative period, have produced for market at least two-thirds of the volume of such peaches produced for market within the County of Mesa in the State of Colorado.

It is, therefore, ordered, That, on and after the effective date hereof, the handling of peaches grown in the County of Mesa in the State of Colorado as is in the current of commerce between the State of Colorado and any point outside thereof shall be in conformity to, and in compliance with, the terms and conditions of the aforesaid order as hereby amended; and such order is hereby amended to read as follows:

DEFINITIONS

§ 940.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States of America.

§ 940.2 *Act.* "Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.).

§ 940.3 *Person.* "Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

§ 940.4 *Peaches.* "Peaches" means all peaches grown in the county of Mesa in the State of Colorado.

§ 940.5 *Committee.* "Committee" means the Administrative Committee established pursuant to the provisions of this subpart.

§ 940.6 *Producer.* "Producer" means any person engaged in growing peaches in the county of Mesa in the State of Colorado for market.

§ 940.7 *Handler.* "Handler" means any person (except a common or contract carrier of peaches owned by another person) who, as owner, agent, or otherwise, ships peaches, or causes peaches to be shipped.

§ 940.8 *Ship.* "Ship" means to sell, transport, offer for transportation, or ship peaches in fresh form by rail, truck, or any other means whatsoever in the current of commerce between the State of Colorado and any point outside thereof.

§ 940.9 *Fiscal year.* "Fiscal year" is synonymous with "season" and means the twelve-month period beginning March 1 of any year and ending the last day of February of the following year, both dates inclusive.

§ 940.10 *District.* "District" means the applicable one of any of the following-described subdivisions of the county of Mesa in the State of Colorado:

(a) "Redlands District," which shall include all that portion of Mesa County lying south of the Colorado River west of the Junction of the Colorado River with the Gunnison River and south and west of the Gunnison River and more fully described as follows: Beginning at a point which is the intersection of the Colorado River and the Utah-Colorado State line; thence southerly along said State line to a point which is the intersection of the south boundary line of Mesa County and said Utah-Colorado State line; thence easterly along said south boundary line of Mesa County to the east boundary line between Mesa and Montrose Counties; thence northerly along said east boundary line of Mesa County to a point which is the intersection between said east boundary line of Mesa County and the Gunnison River; thence northwesterly along said river to a point which is the junction of the Gunnison and Colorado Rivers; thence westerly along said Colorado River to the point of beginning.

(b) "East Orchard Mesa District," which shall include all that portion of Mesa County bounded as follows: Beginning at a point which is the intersection of the Colorado River and the east section line of Section 3, Township 1 South, Range 2 East of the Ute Meridian; thence southerly along the east section line of Sections 3, 10, 15, and 22 of said township to the southeast corner of Section 22 of said township; thence westerly along the south section line of Sections 22, 21, and 20 of said township to a point which is the intersection of said section line and the Big Wash, said point lying on the south boundary of said Section 20 of said township; thence northwesterly along said Big Wash to the junction of the Big Wash and the Colorado River; thence northeasterly along said Colorado River to the point of beginning.

(c) "Vineland District," which shall include all that portion of Mesa County lying east of the following described line: Beginning at a point which is the intersection of the Colorado River and the north boundary of Mesa County; thence southwesterly along said Colorado River to a point which is the intersection of the Colorado River and the west section line of Section 2, Township 1 South, Range 2 East of the Ute Meridian; thence southerly along said west section line of Sections 2, 11, 14, and 23 of said township to the southwest corner of Section 23 of said township; thence easterly along the south section lines of Sections 23 and 24 of said township to the east range line of Range 2 East of the Ute Meridian; thence southerly along said range line to a point which is the intersection of said range line and the Mesa-Delta County boundary line.

(d) "Palisade District," which shall include all that portion of Mesa County bounded as follows: Beginning at a point which is the intersection of the Colorado River and the north boundary line of Mesa County; thence southwesterly along said Colorado River to a point which is the intersection of the main channel of said Colorado River and the range line between Range 1 East and Range 2 East of the Ute Meridian; thence northerly along said range line extended to the Mesa-Garfield County boundary line; thence easterly along said county line to the point of beginning.

(e) "Clifton District," which shall include all that portion of Mesa County bounded as follows: Beginning at a point which is the intersection of the Colorado River and the Utah-Colorado State line; thence easterly along said river to a point which is the junction of the Gunnison and Colorado Rivers; thence southeasterly along said Gunnison River to a point which is the intersection of the Gunnison River and the Mesa County line; thence northerly and easterly along said boundary line of Mesa County to a point which is the intersection of said boundary line of Mesa County and the east range line of Range 2 East of the Ute Meridian; thence northerly along said range line to the northeast corner of Section 25, Township 1 South, Range 2 East of the Ute Meridian; thence westerly along the north section line of Sections 25, 26, 27, 28, and 29 of said township to a point which is the intersection of said section line and the Big Wash, said point lying on the north boundary of said Section 29; thence northwesterly along said Big Wash to the junction of the Big Wash and the Colorado River; thence westerly along the Colorado River to its intersection with the range line between Range 1 East and Range 2 East of the Ute Meridian; thence northerly along said range line extended to the Mesa-Garfield County line; thence westerly along said county line to the northwest corner of Mesa County on the Utah-Colorado State line; thence southerly along said State line to the point of beginning.

ADMINISTRATIVE COMMITTEE

§ 940.20 *Establishment and membership.* An Administrative Commitee is hereby established consisting of nine members, five of whom shall represent producers and four of whom shall represent handlers. There shall be an alternate for each member of the Committee.

§ 940.21 *Selection of initial members.* The initial members of the Administrative Committee and their respective alternates shall be selected by the Secretary as soon as possible after the effective date hereof. In selecting the initial members and their respective alternates, the Secretary shall make his selections upon the basis of the representation provided for in §§ 940.22 and 940.23. The Secretary may consider such nominations or suggestions, if any, submitted by producers and handlers, which nominations or suggestions may be by virtue of elections conducted by groups of producers and groups of handlers prior to, or immediately subsequent to, the effective date of this part.

§ 940.22 *Nomination and selection of successors to initial producer members.* (a) Nominations of producer members and their respective alternates, subsequent to the initial members and alternates, shall be made at a meeting of producers in each of the districts, at such times (on or before February 1 of each year) and places as the Administrative Committee shall designate. At each of such meetings, the producers eligible to participate therein shall select a chairman and a secretary therefor. In the election of nominees for producer member and for alternate for such member, each producer shall be entitled to vote in accordance with the provisions of paragraph (b) of this section. The chairman of each meeting shall announce at such meeting the name of each person for whom votes have been cast, whether as member or as alternate, and the number of votes cast for each such person, and the chairman or the secretary of the meeting shall forthwith transmit such information to the Secretary.

(b) Only producers shall participate in the nominations of producer members and their alternates, and a producer may participate only in the elections held in the district in which he produces peaches. No producer shall participate in the election of producer members and their alternates in more than one district in any one fiscal year. In any such election, each producer shall be entitled to cast but one vote on behalf of himself, his agents, partners, and representatives for each nominee to be elected. Cumulative or proxy voting shall not be allowed.

(c) The producers in each district shall elect two nominees for producer member and two nominees for alternate from such district, and the Secretary shall select one producer member and his respective alternate for such district from among the nominees elected by the producers in such district.

§ 940.23 *Nomination and selection of successors to initial handler members.* (a) Handler members and their respective alternates, subsequent to the initial members and alternates, shall be nominated and selected as follows:

(1) Six nominees for handler members and six nominees for alternates shall be elected by the members of cooperative associations, and the Secretary shall select three handler members and their respective alternates from among such nominees. Any cooperative association shipping 50 percent, or more, of the total volume of peaches shipped by all handlers during the fiscal year in which an election of nominees is being held shall be entitled to elect four of the six nominees for handler members and four of the six nominees for alternates, and the Secretary shall select two of the handler members and their respective alternates from among the nominees elected by such cooperative association: *Provided*, That if such election is being held between March 1 and October 15 of any year, such percentage of the total volume of peaches shipped shall be based upon the total volume of peaches shipped by all handlers during the fiscal year immediately next preceding that in which such election is being held; and

(2) Two nominees for handler member and two nominees for alternate shall be elected by handlers other than cooperative associations and members of such associations, and the Secretary shall select one handler member and his alternate from among such nominees.

(b) Nominations of handler members and their respective alternates, subsequent to the initial members and alternates, to be elected by members of cooperative associations shall be made at a meeting or meetings of the members of such cooperative associations at such times (on or before February 1 of each year) and places as the Administrative Committee shall designate. At each such meeting, the handlers eligible to participate therein shall select a chairman and a Secretary therefor. In the election of nominees for such members and alternates, each member of a cooperative association shall be entitled to cast but one vote on behalf of himself, his agents, partners, and representatives. Cumulative voting shall be permissible, but proxy voting shall not be allowed. The chairman of each meeting shall announce at such meeting the name of each person for whom votes have been cast, whether as member or as alternate, and the number of votes cast for each such person, and the chairman or the secretary of such meeting shall forthwith transmit such information to the Secretary.

(c) Nominations for a handler member and his alternate, subsequent to the initial member and alternate, to be elected by handlers other than cooperative associations and members of such associations, shall be made at a meeting of such handlers at such time (on or before February 1 of each year) and place as the Administrative Committee shall designate. At each such meeting, the handlers eligible to participate therein shall select a chairman and a secretary therefor. In the election of nominees for such member and alternate, each such handler shall be entitled to cast but one vote on behalf of himself, his agents, partners, affiliates, subsidiaries, and representatives, which vote shall be weighted by the volume of

peaches shipped by such handler during the fiscal year in which such election is being held: *Provided*, That if such election is being held between March 1 and October 15 of any year, such vote shall be weighted by the volume of peaches shipped by such handler during the fiscal year immediately next preceding that in which such election is being held. Proxy voting shall not be allowed. The chairman of the meeting shall announce at such meeting the name of each person for whom votes have been cast, whether as member or as alternate, and the number of votes cast for each such person, and the chairman or the secretary of the meeting shall forthwith transmit such information to the Secretary.

§ 940.24 *Eligibility for membership.* (a) Producer members of the Administrative Committee and alternates for such members must be producers of peaches in the district in and for which they are nominated and selected.

(b) A handler member of the Administrative Committee and an alternate for such member, to be selected from the nominees of cooperative associations, must be a member or an employee of a cooperative association.

(c) The handler member of the Administrative Committee and the alternate for such member, to be selected from the nominees of handlers other than cooperative associations and members of such associations, must be a handler and shall not be a member or an employee of a cooperative association.

§ 940.25 *Failure to nominate.* In the event nominations, subsequent to the selection by the Secretary of the initial members and their respective alternates, are not made and the names of such nominees are not submitted to the Secretary on or before February 15 of any year, pursuant to §§ 940.22 and 940.23, the Secretary may select such members and alternates without regard to nominations.

§ 940.26 *Qualification by members and alternates.* Any person selected by the Secretary as a member or as an alternate for a member of the Administrative Committee shall qualify therefor by filing a written acceptance thereof with the Secretary within 15 days after being notified of such selection.

§ 940.27 *Term of office.* The initial members and their respective alternates shall hold office for a term beginning on the date designated by the Secretary and ending April 30, 1940, and until their successors are selected and have qualified. Members and alternates selected subsequent to the initial term shall serve during the fiscal year for which they have been selected and until their successors are selected and have qualified.

§ 940.28 *Alternate members of Administrative Committee.* An alternate for a member shall act in the place and stead of such member during such member's absence, or, in the event of the death, removal, resignation, or disqualification of such member, until a successor for such member is selected and has qualified.

§ 940.29 *Vacancies.* To fill any vacancy occasioned by the failure to qualify of any person selected as a member or as an alternate for a member of the Administrative Committee, or, in the event of the death, removal, resignation, or disqualification of any member or of any alternate, nomination and selection to fill such vacancy shall be made in the manner set forth in §§ 940.20 to 940.35. If nominations to fill such vacancy are not made or the names of such nominees are not submitted to the Secretary within 20 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nomination.

§ 940.30 *Compensation and expenses.* The members and the alternates for members of the Administrative Committee shall serve without compensation, but they may be reimbursed, at a rate of not to exceed $5 per meeting, for expenses incurred by them in the performance of their duties and in the exercise of their powers.

§ 940.31 *Powers.* The Administrative Committee shall have the following powers:

(a) To administer, as specifically provided in §§ 940.20 to 940.35, the terms and provisions of this part;

(b) To make administrative rules and regulations in accordance herewith and to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 940.32 *Duties.* The duties of the Administrative Committee shall be as follows:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To keep minutes, books, and records which will clearly reflect all of the acts and transactions of the Administrative Committee, which minutes, books, and records shall be subject at any time to examination by the Secretary;

(c) To study and assemble data on the growing, shipping, and marketing conditions respecting peaches;

(d) Each season prior to making any recommendation to the Secretary for the regulation of shipments pursuant to the provisions of this subpart, to determine the marketing policy to be followed during such season and to submit to the Secretary a report thereon containing, among other provisions, information relative to the estimated total production of peaches; information as to the expected grades and sizes of such peaches; possible or expected demand conditions of different market outlets; supplies of competitive commodities; an appropriate analysis of the foregoing factors and conditions; and the type of regulation of shipments of peaches expected to be recommended;

(e) To furnish to the Secretary such available information as the Secretary requests;

(f) To perform such duties as may be assigned to it from time to time by the Secretary in connection with the administration of section 32 of the act to amend the Agricultural Adjustment Act, and for other purposes, Public Act No. 320, 74th Congress (49 Stat. 774), August 24, 1935, as amended;

(g) To cause the books of the Administrative Committee to be audited by one or more competent accountants at least once each fiscal year and at such other times as the committee may deem necessary or as the Secretary may request, and to file with the Secretary copies of any and all audit reports;

(h) To appoint such employees as it may deem necessary, and to determine the salaries and define the duties of such employees;

(i) To give the Secretary the same notice of meetings of the Administrative Committee as is given to the members of the committee; and

(j) To select a chairman of the Administrative Committee and, from time to time, such other officers as it may deem advisable.

§ 940.33 *Procedure.* A quorum shall consist of six members of the Administrative Committee, or alternates then serving in the place and stead of any members, in attendance at a meeting, and all decisions of the committee shall be made by not less than six affirmative votes.

§ 940.34 *Rights of the Secretary.* The members of the Administrative Committee, including successors and alternates, and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary for cause at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 940.35 *Funds and other property.* (a) All funds received by the Administrative Committee pursuant to any of the provisions of this part shall be used solely for the purposes herein specified, and the Secretary may require the committee and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, or expiration of the term of office of any member of the Administrative Committee, all books, records, funds, and other property in his possession shall be delivered to his successor in office or to the committee, and such assignments and other instruments shall be executed as may be necessary to vest in his successor or in the committee full title to all the books, records, funds, and other property in the possession or under the control of such member pursuant to this part.

EXPENSES AND ASSESSMENTS

§ 940.40 *Expenses.* The Administrative Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by such committee for its maintenance and functioning hereunder during the then current fiscal year. The committee shall

prepare, and submit to the Secretary, a proposed budget of expenses and a proposed rate of assessment for the then current fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 940.41.

§ 940.41 *Assessments.* Each handler shall pay to the Administrative Committee, upon demand, such handler's pro rata share of the aforesaid expenses. Each handler's pro rata share shall be based upon a rate of assessment fixed by the Secretary and shall be that proportion of such expenses which the total quantity of peaches shipped during a fiscal year by such handler as the first handler thereof is of the total quantity of peaches shipped by all handlers as the first handlers thereof, during the same fiscal year. The rate of assessment may be increased, from time to time during any fiscal year, by the Secretary in order to cover any later finding by the Secretary of the estimated or actual expenses of the committee for said fiscal year. Each such increase shall be applicable to all assessable peaches shipped during such fiscal year.

§ 940.42 *Handler accounts.* At the end of each fiscal year the Administrative Committee shall credit each handler with any amount paid by such handler in excess of his pro rata share of the expenses or shall debit such handler with the amount by which his pro rata share exceeds the amount paid by him. Any such debits shall become due and payable upon demand of the Committee.

§ 940.43 *Suit to enforce collection.* The Administrative Committee may, with the approval of the Secretary, maintain a suit in its own name or in the names of its members for the collection of any handler's pro rata share of expenses.

REGULATION OF SHIPMENTS

§ 940.50 *Regulation of shipments.* Whenever the Administrative Committee deems it advisable to regulate, during any period or periods, the shipment of peaches by grades or sizes, or both, or by minimum standards of quality or maturity, or both, it shall so recommend to the Secretary.

§ 940.51 *Recommendation of the Administrative Committee.* (a) At the time of submitting each such recommendation for the regulation by grades or sizes, or both, the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. The committee shall promptly give adequate notice to handlers and producers of each such recommendation.

(b) At the time of submitting each such recommendation for the regulation by minimum standards of quality or maturity, or both, the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. Each such recommendation of the committee should, so far as it is practical, be in terms of such grades or sizes, or both, of peaches as would be in the public interest and tend to effectuate the declared policy of the act.

§ 940.52 *Establishment of regulation*—(a) *By grades and sizes.* Whenever the Secretary finds, from any such recommendation and information or other available information, that to limit the shipment of the total quantity of peaches to particular grades or sizes, or both, would tend to effectuate the declared policy of the act, he shall so limit the shipment of peaches during a specified period or periods. The Secretary shall promptly notify the committee of each such regulation; and the committee shall promptly give adequate notice thereof to handlers and producers.

(b) *By minimum standards of quality and maturity.* Whenever the Secretary finds, from any such recommendation and information or other available information, that to establish minimum standards of quality or maturity, or both, and to limit the shipment of peaches during any period or periods to those meeting such minimum standards would be in the public interest and would tend to effectuate the declared policy of the act, he shall establish such minimum standards, designate the period or periods, and so limit the shipment of such peaches. The Secretary shall promptly notify the committee of each such regulation; and the committee shall promptly give adequate notice thereof to handlers and producers.

§ 940.53 *Exemptions and exemption certificates.* (a) The Administrative Committee shall, subject to the approval of the Secretary, adopt procedural rules to govern the issuance of exemption certificates.

(b) In the event the Secretary issues a regulation pursuant to § 940.52, the committee shall determine what the percentage of peaches permitted to be shipped under such regulation is of the total quantity of peaches which would be shipped in the absence of such regulation; and the committee shall forthwith announce this percentage. An exemption certificate shall thereafter be issued by such committee to any producer who furnishes proof, satisfactory to such committee, that by reason of conditions beyond his control he will be prevented, because of the regulation issued, from shipping, or having shipped, a percentage of his crop of peaches equal to the percentage, determined as aforesaid. The certificate shall permit such producer to ship, or have shipped, a percentage of his crop of peaches equal to the aforesaid percentage.

(c) If any producer is dissatisfied with the action of the Administrative Committee taken with respect to his application for an exemption certificate, such producer may appeal to the Secretary. The Secretary may, upon any appeal made as aforesaid, modify or reverse the action of the committee. The authority of the Secretary to supervise and control the issuance of exemption certificates is unlimited and plenary; and any determination by the Secretary with respect to an exemption certificate shall be final and conclusive.

(d) The Administrative Committee shall, from time to time, submit to the Secretary reports stating in detail the number of exemption certificates issued, the quantity of peaches thus exempted, and such additional information as may be requested by the Secretary.

§ 940.54 *Inspection and certification.* Prior to making each shipment of peaches during any period in which the shipment of peaches is regulated pursuant to § 940.52, each handler shall, if the respective shipment has not theretofore been so inspected, have such shipment inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary may designate. Promptly thereafter, such handler shall submit, or cause to be submitted, to the Administrative Committee a copy of the inspection certificate issued with respect to such shipment.

§ 940.55 *Modification, suspension, or termination.* Whenever the Administrative Committee deems it advisable to recommend to the Secretary the modification, suspension, or termination of any or all of the regulations issued pursuant to § 940.52, it shall so recommend to the Secretary. If the Secretary finds, upon the basis of such recommendation or other available information, that to modify any such regulation will tend to effectuate the declared policy of the act, he shall so modify such regulation. If the Secretary finds, upon the basis of such recommendation or other available information, that any such regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. The Secretary shall promptly notify the committee, and the committee shall promptly give adequate notice to handlers and producers, of each such modification, suspension, and termination. In like manner and upon the same basis the Secretary may terminate any such modification or suspension.

REPORTS AND LIABILITY

§ 940.65 *Reports.* Upon the request of the Administrative Committee, made with the approval of the Secretary, each handler shall furnish the Committee, in such manner and at such times as it prescribes, such information as will enable it to exercise its powers and to perform its duties under this part.

§ 940.66 *Liability of Administrative Committee members.* No member, alternate member, or employee of the Administrative Committee shall be held liable, either individually or jointly with others, in any way whatsoever, to any handler or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty.

COMPLIANCE AND EXCEPTIONS

§ 940.70 *Compliance.* Except as otherwise specifically provided in this

part, no person shall ship peaches, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part.

§ 940.71 *Peaches not subject to regulation.* Nothing contained herein shall be construed to authorize any limitation of the right of any person to ship (a) peaches for consumption by a charitable institution or for distribution for relief purposes or for distribution by a relief agency; (b) peaches for processing on a commercial scale; or (c) peaches to any one person during any one day if such peaches are not for resale and do not aggregate more than 19 bushels. The inspection and assessment provisions hereof shall not be applicable to peaches so shipped. The Administrative Committee may prescribe adequate safeguards to prevent peaches, shipped for such purposes, from entering commercial channels of trade contrary to the provisions hereof.

EFFECTIVE TIME AND TERMINATION

§ 940.80 *Effective time.* The provisions of this part shall become effective August 15, 1939, and shall continue in force until terminated in one of the ways specified in § 940.81.

§ 940.81 *Termination.* (a) The Secretary may at any time terminate the provisions of this part by giving at least 1 day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this part whenever he finds that such provision or provisions obstruct or do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any current marketing period whenever he finds that such termination is favored by a majority of the producers of peaches who, during such current marketing period, have been engaged in the production of peaches for market: *Provided*, That such majority have, during such period, produced for market more than 50 percent of the total volume of peaches produced for market during such period, but such termination shall be effective only if notice thereof is given on or before February 1 of such current marketing period.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 940.82 *Proceedings after termination.* (a) Upon the termination of the provisions of this part, the members of the Administrative Committee then functioning shall, for the purpose of liquidating the affairs of the Committee, continue as joint trustees of all funds and property then in the possession or under the control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements, or deliver all funds and property on hand, together with all books and records of the Administrative Committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds and claims vested in the committee or the joint trustees pursuant hereto.

(c) Any funds collected for expenses pursuant to the provisions of this part, and held by such joint trustees or such other person, over and above amounts necessary to meet outstanding obligations and the expenses incurred necessarily by the joint trustees or such other person in the performance of their duties under this part, shall, as soon as practicable after the termination hereof, be returned to the handlers pro rata in proportion to their contributions made pursuant to the provisions of this part.

(d) Any person to whom funds, property, or claims have been delivered by the Administrative Committee or its members upon direction of the Secretary, as provided in this section, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon the members of the committee or upon the joint trustees.

MISCELLANEOUS PROVISIONS

§ 940.90 *Agents.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 940.91 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination hereof, except with respect to acts done under and during the existence of this part.

§ 940.92 *Separability.* If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 940.93 *Derogation.* Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 940.94 *Amendments.* Amendments to this part may be proposed, from time to time, by the Administrative Committee or by the Secretary.

§ 940.95 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued hereunder, or (b) release or extinguish any violation of this part or of any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

Issued at Washington, D. C., this 1st day of August 1950, to become effective upon publication in the FEDERAL REGISTER.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 50-6856; Filed, Aug. 3, 1950; 8:51 a. m.]

PART 984—HANDLING OF WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

DETERMINATION RELATIVE TO INCREASE IN BUDGET OF EXPENSES OF WALNUT CONTROL BOARD FOR MARKETING YEAR BEGINNING AUGUST 1, 1949

Notice was published in the July 13, 1950, issue of the FEDERAL REGISTER (15 F. R. 4445) that consideration was being given to the approval of an increase in the budget of expenses for the Walnut Control Board, established pursuant to Marketing Agreement No. 105 and Order No. 84 (7 CFR 984.1 et seq.), regulating the handling of walnuts grown in California, Oregon, and Washington, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

In said notice, opportunity was afforded interested persons to submit to the Director, Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C., written data, views, or arguments for consideration prior to the final approval by the Secretary of this proposed increase in the budget of the Walnut Control Board. No such written data, views or arguments were submitted, and the time for filing them has now expired.

After further consideration of all relevant matters, including the proposal which was submitted by the Walnut Control Board, it is concluded that this proposed increase in the budget of expenses of the Walnut Control Board should be approved. Therefore, it is hereby ordered, that 7 CFR 984.301 be amended to read as follows:

§ 984.301 *Budget of expenses of the Walnut Control Board for the marketing year beginning August 1, 1949.* Expenses in the amount of $68,080 are reasonable and are likely to be incurred by the Walnut Control Board for its maintenance and functioning, and for such other purposes as the Secretary may, pursuant to the provisions of the marketing agreement and order, determine to be appropriate, for the marketing year beginning August 1, 1949, and the

incurring of expenses not in excess of that amount for the said marketing year is approved.

It is hereby further found that it is necessary to make this increase effective not later than the date of the publication of this document in the FEDERAL REGISTER. The end of said marketing year is July 31, 1950, which is less than 30 days distant, and all expenses will need to be incurred before that time. Such expenses will also need to be paid promptly. It has not been practicable to determine heretofore the exact amount of increase which would be needed. No advance preparation for this regulation is required. Therefore, good cause exists for not delaying the effective date of this regulation beyond the date of its publication in the FEDERAL REGISTER (see section 4 (c) of the Administrative Procedure Act; 5 U. S. C. 1001 et seq.).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup., 608c)

Done at Washington, D. C., this 1st day of August 1950, to be effective on and after 12:01 a. m., P. s. t., on the date of the publication of this document in the FEDERAL REGISTER.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 50-6858; Filed, Aug. 3, 1950; 8:51 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

[Regs., Serial No. SR-350]

PART 42—IRREGULAR AIR CARRIER AND OFF-ROUTE RULES

AUTHORIZATION FOR SCHEDULED AIR TRANSPORTATION OF CARGO

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 31st day of July 1950.

Special Civil Air Regulation SR-334 currently authorizes air carriers appropriately authorized by the Board to engage in scheduled cargo-only service to conduct such operations under the provisions of Part 42 of the Civil Air Regulations. That authorization expires August 1, 1950. At the time the Board promulgated that regulation it pointed out that that was only a temporary measure pending the development of adequate certification and operation rules for scheduled air transportation of cargo. It was anticipated that such rules would be developed prior to August 1, 1950. However, that project is one in which the Board's Bureau of Safety Regulation is still engaged. Pending a determination in this matter it is considered desirable to continue the authorization currently in effect.

Interested persons have been afforded an opportunity to participate in the making of this regulation, and due consideration has been given to all relevant matter presented. Since it imposes no additional burden on any person, this regulation may be made effective without prior notice.

In consideration of the foregoing the Civil Aeronautics Board hereby makes and promulgates the following Special Civil Air Regulation effective August 1, 1950:

Any air carrier authorized by the Board, pursuant to Title IV of the Civil Aeronautics Act of 1938, as amended, to engage in scheduled air transportation of cargo may conduct such transportation under the air carrier certification and operation rules prescribed in Part 42 of the Civil Air Regulations.

This regulation shall supersede Special Civil Air Regulation Serial Number SR-334 and shall terminate August 1, 1951, unless sooner terminated or rescinded by the Board.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interprets or applies secs. 601, 604, 52 Stat. 1007, 1010; 49 U. S. C. 551, 554)

By the Civil Aeronautics Board.

[SEAL] FRED A. TOOMBS,
Acting Secretary.

[F. R. Doc. 50-6859; Filed, Aug. 3, 1950; 8:51 a. m.]

[Regs., Serial No. SR-351]

PART 40—AIR CARRIER OPERATING CERTIFICATION

PART 61—SCHEDULED AIR CARRIER RULES

ISSUANCE OF LOCAL AREA AIR CARRIER OPERATING CERTIFICATES FOR AIRCRAFT UNDER 12,500 POUNDS TAKE-OFF WEIGHT

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 31st day of July 1950.

Special Civil Air Regulation SR-333 authorizes the Administrator to issue temporary air carrier operating certificates of one-year duration called Air Carrier Operating Certificates for Local Areas, to scheduled air carriers holding temporary certificates of public convenience and necessity authorizing the use of aircraft under 12,500 pounds maximum certificated take-off weight in accordance with such certification and operating standards as may be established by the Administrator. At the time the Board adopted SR-333 it was intended that appropriate certification and operation standards for such carriers would be developed prior to August 1, 1950. However, while the Board's Bureau of Safety Regulation has been actively engaged in this project, it is not anticipated that this project will be completed prior to August 1, 1950. In view of that and in view of the fact that we believe that it is desirable to differentiate clearly between certificates issued to air carriers using conventional multi-engine aircraft and those using aircraft under 12,500 pounds maximum certificated take-off weight, we consider it necessary to extend the authority granted in SR-333 until August 1, 1951, or until such earlier date as the general rules regarding the certification and operation of such air carriers are adopted, and to authorize the Administrator to extend the duration of certificates issued under SR-333 for another one-year period.

Interested persons have been afforded an opportunity to participate in the making of this regulation, and due consideration has been given to all relevant matter presented.

Since this regulation imposes no additional burden on any person, it may be made effective on less than 30 days' notice.

In consideration of the foregoing, the Civil Aeronautics Board hereby makes and promulgates a Special Civil Air Regulation, effective August 1, 1950, to read as follows:

The Administrator is hereby authorized to issue temporary air carrier operating certificates of one-year duration to scheduled air carriers holding temporary certificates of public convenience and necessity, authorizing the use of aircraft under 12,500 pounds maximum certificated take-off weight, in accordance with such certification and operating standards as may be established by the Administrator and to extend for a like period the duration of certificates heretofore issued under the authority of Special Civil Air Regulation SR-333: *Provided*, That all such certificates so issued or extended shall expire at such earlier date as may be directed in any general rule issued by the Board regulating this subject matter.

This regulation shall terminate August 1, 1951, unless sooner superseded or rescinded.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interprets or applies secs. 601, 604, 52 Stat. 1007, 1010; 49 U. S. C. 551, 554)

By the Civil Aeronautics Board.

[SEAL] FRED A. TOOMBS,
Acting Secretary.

[F. R. Doc. 50-6860; Filed, Aug. 3, 1950; 8:51 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 5332]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

KLEEREX CO. ET AL

Subpart—*Advertising falsely or misleadingly:* § 3.170 *Qualities or properties of product or service.* In connection with the offering for sale, sale, or distribution of the product Kleerex, or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, disseminating, etc., any advertisements by means of the United States mails, or in commerce, or by any means to induce, etc., directly or indirectly, the purchase in commerce, etc., of said product, which advertisements represent, directly, or by implication, that said product will cause pimples to disappear or constitutes an effective treatment for pimples; prohibited.

(Sec. 6, 38 Stat. 722; 15 U. S. C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, Milton W. Folds et al, doing business as Kleerex Company, Docket 5332, June 6, 1950]

In the Matter of Milton W. Folds, Jessie D. Folds, and Jessie May Folds, Co-partners Doing Business Under the Name Kleerex Company

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision and supplemental recommended decision of the trial examiner, and the exceptions filed thereto, and briefs filed in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That Milton W. Folds, Jessie D. Folds, and Jessie May Folds, individually and doing business under the name of Kleerex Company, or under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the product Kleerex, or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

(1) Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that said product will cause pimples to disappear or constitutes an effective treatment for pimples.

(2) Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph (1) hereof.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: June 6, 1950.

By the Commission.

[SEAL] D. C. DANIEL, *Secretary.*

[F. R. Doc. 50-6827; Filed, Aug. 3, 1950; 8:47 a. m.]

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

SPECIAL EXEMPTION

The Securities and Exchange Commission today announced the adoption of amendments to § 230.240 (Rule 240) under Regulation A–M. That regulation, adopted pursuant to section 3 (b) of the Securities Act of 1933, exempts certain offerings of assessable mining securities from registration under the act.

The purpose of the amendments is to remove the restriction which prevents issuers from commencing more than one offering under the regulation per year. However, the regulation as amended continues to limit the aggregate of unregistered offerings and assessments received to not more than $100,000 in each yearly period. The amendments eliminate paragraph (c) of Rule 240, change the manner of computation of successive yearly periods under paragraph (b) of the rule, and by amendment of paragraph (f) of the rule, require the reporting to the Commission of assessments received by an issuer.

The deletion of paragraph (c) eliminates the restriction under which an issuer could not commence more than one offering under the regulation in any period of one year and, subject to the provisions of the regulation, thereby permits more than one exempted offering in a yearly period.

The amendment changes the manner of determining the successive yearly periods during which offerings of unregistered securities and assessments received are limited in the aggregate of $100,000. The date for commencing such periods will be established by the issuer's first prospectus filed under the Regulation on or after August 1, 1950.

An issuer which has filed a prospectus under the Regulation prior to August 1, 1950, will not be affected by the amendment as to computation of yearly periods unless it files a subsequent prospectus on or after August 1, 1950. The date of such subsequent filing will then determine the measurement of the yearly periods following such filing and a subsequent filing thereafter will not operate to change the computation of the yearly periods.

Under amended paragraph (b), the total of securities offered (other than those registered under the act) and all assessments received by the issuer within any yearly period, as computed for such issuer on the basis of the filing date of its first prospectus on or after August 1, 1950, will be counted to determine the availability of an exemption for further offerings under the regulation during the time remaining before expiration of such yearly period.

The text of the Commission's action is as follows:

The Securities and Exchange Commission, acting pursuant to authority conferred upon it by the Securities Act of 1933, particularly sections 3 (b) and 19 (a) thereof, and finding such action necessary and appropriate in the public interest and for the protection of investors, and necessary for the execution of the functions vested in it by the said act, hereby takes the following action:

Paragraphs (b), (c) and (f) of § 230.240 (Rule 240) are amended to read as follows:

§ 230.240 *For assessable shares of stock of mining corporations.* * * *

(b) The sum of the following shall not exceed $100,000 in each successive yearly period commencing with the filing date of the first prospectus required by paragraph (e) of this section which is filed on or after August 1, 1950:

(1) The aggregate offering price of the issuer's securities offered to the public, other than securities registered under the act and other than securities the offering of which has been withdrawn by amending the prospectus, and filing copies of such amended prospectus pursuant to paragraph (f) of this section; and,

(2) The aggregate amount by the issuer as a result of all assessments.

[Paragraph (c) of § 230.240 is rescinded.]

* * * * *

(f) Three copies of the prospectus required under paragraph (e) of this section shall be filed with the regional office of the Commission for the region in which the issuer's principal place of business is located, at least ten days prior to its use. Such copies shall be accompanied by a letter of transmittal showing the amounts referred to in paragraphs (a) (2), (a) (3), (b) (1) and (b) (2) of this section.

The Commission finds that the foregoing amendments will apply only in a limited number of cases and that notice and procedure pursuant to sections 4 (a) and (b) of the Administrative Procedure Act are not necessary. The Commission also finds that the amendment recognizes an exemption and relieves a previous restriction and may, therefore, be made effective immediately.

The foregoing action shall be effective August 1, 1950.

(Sec. 19, 48 Stat. 85 as amended; 15 U. S. C. 77s)

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

JULY 31, 1950.

[F. R. Doc. 50-6819; Filed, Aug. 3, 1950; 8:47 a. m.]

TITLE 24—HOUSING AND HOUSING CREDIT

Chapter I—Home Loan Bank Board, Housing and Home Finance Agency

Subchapter D—Insurance of Accounts

PART 162—APPLICATIONS FOR INSURANCE

PART 165—TERMINATION OF INSURANCE

PART 167—PROCEDURE TO AMEND RULES AND REGULATIONS; HEARINGS

AMENDMENTS RELATING TO TERMINATION OF INSURANCE UNDER AMENDATORY ACT OF CONGRESS, APPROVED JUNE 27, 1950

AUGUST 1, 1950.

Resolved that in conformity with the provisions of Public Law No. 576 of the 81st Congress, approved June 27, 1950, the rules and regulations for Insurance of Accounts (24 CFR, Subchapter D, Chapter I of Subtitle B) are hereby amended, effective June 27, 1950, in the following particulars:

1. Section 162.11 (24 CFR) is repealed.

2. Part 165—Termination of Insurance (24 CFR, Part 165) is amended to read as follows:

Sec.
165.1 Effective date of termination.
165.2 Voluntary termination.
165.3 Termination by the corporation.
165.4 Notice to insured members.
165.5 Cessation of existence; mergers and consolidations.
165.6 Cessation of existence; other cases.
165.7 Surrender of insurance certificate.

AUTHORITY: §§ 165.1 to 165.6 issued under sec. 402, 48 Stat. 1256, as amended, Reorg. Plan No. 3 of 1947, 12 F. R. 4981, 3 CFR, 1947 Supp., 61 Stat. 954; 12 U. S. C. 1725, 5 U. S. C. 133y–16. Interpret or apply secs. 404, 407, 48 Stat. 1258, as amended, 1260, sec. 10, Pub. Law No. 576, 81st Cong.; 12 U. S. C. and Sup., 1727, 1730.

§ 165.1 *Effective date of termination.* The effective date of termination of the insured status of an institution under the provisions of §§ 165.2 and 165.3 shall be the date of the written notice provided for therein.

§ 165.2 *Voluntary termination.* Any insured institution other than a Federal savings and loan association may terminate its status as an insured institution by written notice to the Corporation. Evidence of legal and valid action to effect termination of its insurance must be submitted by the insured institution to the Corporation with such notice.

§ 165.3 *Termination by the corporation.* Termination by the Corporation of the insured status of any insured institution for violation of its duty as an insured institution shall be by written notice to such institution. No such notice shall be given by the Corporation to any insured institution until such insured institution shall have been afforded a reasonable opportunity to be heard upon an order to show cause, which order shall state the grounds upon which the proposed termination is based. A violation of any provision of Title IV of the National Housing Act, as amended, any rule or regulation made thereunder, or of any agreement with the Corporation whether made pursuant to section 403 of such act (48 Stat. 1257, 49 Stat. 298; 12 U. S. C. 1726) or otherwise shall constitute a violation by an insured institution of its duty as such.

§ 165.4 *Notice to insured members.* Upon any termination of the status of any institution as an insured institution, such institution shall submit to the Corporation, within 60 days from the date of such termination, satisfactory evidence of the giving of notice of termination of insurance of accounts to its insured members, as provided by law, together with a copy of the notice given. In the event of the failure of any such institution to submit such evidence within the 60-day period or in the event the Corporation determines the form of notice given by such institution is unsatisfactory, the Corporation may give such notice to the insured members of the institution of the termination of its status as an insured institution as the Corporation determines appropriate.

§ 165.5 *Cessation of existence; mergers and consolidations.* Subject to the provisions of § 163.16 of this subchapter the termination of the existence of an insured institution by merger or consolidation shall terminate, as of the effective date of such merger or consolidation, the insured status of such insured institution and all rights of its insured members to insurance by this Corporation and its liability for insurance premiums, except premiums still unpaid (including current annual premium) shall cease as of such date.

§ 165.6 *Cessation of existence; other cases.* In connection with any other case of cessation of existence of an insured institution, by lapse of charter, dissolution, voluntary liquidation, or otherwise than by reason of a default, the insured status of the insured institution, all rights of its insured members to insurance by this Corporation and its liability for insurance premiums, except premiums still unpaid (including current annual premium) shall cease, as of the date of the distribution of its final liquidating dividend.

§ 165.7 *Surrender of insurance certificate.* Upon termination of insurance of any insured institution under this part, the certificate of insurance shall be surrendered to the Corporation for cancellation.

3. Section 167.2 (24 CFR 167.2) is amended by adding the following sentence at the end thereof: "This section shall not apply to hearings upon action taken by the Corporation to terminate the status of an insured institution as such, under the provisions of section 407 of the National Housing Act, as amended (48 Stat. 1260, Pub. Law No. 576, 81st Cong., approved June 27, 1950; 12 U. S. C. 1730)." so that the section shall read as follows:

§ 167.2 *Hearings.* Any person who has made an application or petition to the Board pursuant to any provision of Parts 162, 163, 164, or 165 of this subchapter may request a hearing thereon: *Provided*, Such application or petition has been denied or disapproved by the Board. At any time after the filing of any such application or petition and before consideration thereof by the Board, any interested person may request a hearing upon such application or petition. The Board may order a hearing in connection with the consideration of any matter arising under any provision of the rules and regulations in this subchapter, and, subject to § 167.1, under Title IV of the National Housing Act, as amended, whether or not any request therefor has been made by any person. The Board may deny any request for, or dispense with any hearing for which this section provides when, in its judgment, no need therefor exists. This section shall not apply to hearings upon action taken by the Corporation to terminate the status of an insured institution as such, under the provisions of section 407 of the National Housing Act, as amended (48 Stat. 1260, Pub. Law No. 576, 81st Cong., approved June 27, 1950; 12 U. S. C. 1730).

Resolved further, that these amendments being required by reason of amendments to Title IV of the National Housing Act, as amended, which were effected by an act of Congress approved June 27, 1950 (Pub. Law No. 576, 81st Cong.) changing the procedure governing termination of insurance of accounts, the Home Loan Bank Board hereby finds that they may be adopted under the provisions of § 108.11 of the General regulations of the Home Loan Bank Board (24 CFR 108.11) and that deferment of the effective date would be ineffective.

(Sec. 402, 48 Stat. 1256, as amended, Reorg. Plan No. 3 of 1947, 12 F. R. 4981, 3 CFR, 1947 Supp., 61 Stat. 954; 12 U. S. C. 1725, 5 U. S. C. 133y–16. Interprets or applies secs. 403, 407, 48 Stat. 1257, as amended, 1260; 12 U. S. C. 1726, 1727, 1730)

By the Home Loan Bank Board.

[SEAL] J. FRANCIS MOORE, *Secretary.*

[F. R. Doc. 50–6845; Filed, Aug. 3, 1950; 8:50 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue, Department of the Treasury

Subchapter C—Miscellaneous Excise Taxes

[Regulations 16]

PART 187—DENATURATION OF RUM

Preamble: 1. These regulations, Regulations 16, "Denaturation of Rum" (26 CFR Part 187), shall, on or after September 1, 1950, supersede Regulations 16, 1940 Edition (26 CFR Part 187; 5 F. R. 2062); and Treasury Decisions 5721 (14 F. R. 4901) and 5766 (14 F. R. 7453).

2. These regulations shall not affect or limit any act done or any liability incurred under any regulations superseded hereby, or any suit, action, or proceeding had or commenced in any civil, administrative, or criminal cause and proceeding prior to the effective date of these regulations, nor shall these regulations release, acquit, affect, or limit any offense committed in violation of previ-

ously existing regulations, or any penalty, liability or forfeiture incurred prior to such date.

SUBPART A—SCOPE OF REGULATIONS

Sec.
187.1 Denaturation and withdrawal.
187.2 Sale and use.

SUBPART B—DEFINITIONS

187.10 Meaning of terms.
187.11 Collector.
187.12 Commissioner.
187.13 Distillery denaturing bonded warehouse.
187.14 Distillery premises.
187.15 District supervisor.
187.16 Gallon.
187.17 Including.
187.18 Inclusive language.
187.19 I. R. C.
187.20 Person.
187.21 Proof.
187.22 Proof gallon.
187.23 Proprietor.
187.24 Rum.
187.25 Secretary.
187.26 Tank car.
187.27 U. S. C.

SUBPART C—LOCATION

187.35 On distillery premises.

SUBPART D—CONSTRUCTION

187.40 Buildings.
187.41 Denaturing material storeroom.
187.42 Rum storeroom.
187.43 Specially denatured rum storeroom.
187.44 Empty container storeroom.
187.45 Government cabinet.

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AUTHORITY: §§ 187.1 to 187.367 issued under 53 Stat. 375, 467; 26 U. S. C. 3176, 3791. Interpret or apply 53 Stat. 355; 26 U. S. C. 3070. Other statutory provisions interpreted or applied are cited to the text in parentheses.

LAWS OF MORE COMMON APPLICATION PERTAINING TO THE DENATURATION OF RUM[1]

5 U. S. C. 22 DEPARTMENTAL REGULATIONS. The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers and property appertaining to it.

26 U. S. C. 2883 TRANSFER OF SPIRITS AT REGISTERED DISTILLERIES.

* * * * *

(c) *Transfer of rum for denaturation.* Rum of not less than one hundred and fifty degrees of proof may be transferred by pipeline for denaturation from receiving cisterns in the cistern room of any distillery to a denaturing bonded warehouse on the distillery premises or to storage tanks situated in the internal revenue bonded warehouse located on the distillery premises, or from such storage tanks to a denaturing bonded warehouse on the distillery premises.

* * * * *

26 U. S. C. 2901 LOSS ALLOWANCES.

(a) *Extent.* No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected—

(1) *Theft.* In the case of loss by theft unless the Commissioner shall find that the theft occurred without connivance, collusion, fraud, or negligence on the part of the distiller, warehouseman, owner, consignor, consignee, bailee, or carrier, or the employees of any of them; and

(2) *Voluntary destruction.* In the case of voluntary destruction unless the distilled spirits were unfit for use for beverage purposes and the distiller, warehouseman, or other person responsible for the tax, obtained the written permission of the Commissioner for such destruction in each case.

(b) *Proof of loss.* In any case in which spirits are lost or destroyed, whether by theft or otherwise, the Commissioner may require the distiller or warehouseman or other person responsible for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be upon the distiller or warehouseman or other person responsible for the tax to establish to the satisfaction of the Commissioner that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the distiller, warehouseman, owner, consignor, consignee, bailee, or carrier, or the employees of any of them.

(c) *Refund of tax.* When, in any case where the tax would not be collectible by virtue of subsection (a), but such tax has been paid, the Commissioner shall refund such tax. Nothing in section 2901 as hereby amended, or as heretofore amended, shall be construed to authorize refund of the tax where the loss occurred after the tax was paid.

(d) *Insurance coverage.* The abatement or refund of taxes provided for by subsection (a) and (c) in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed for such loss.

(e) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see section 3170.

26 U. S. C. 3070 WITHDRAWAL FROM BOND TAX FREE.

(a) *For industrial use.* Domestic alcohol of such degree of proof as may be prescribed by the Commissioner, and approved by the Secretary, may be withdrawn from bond without the payment of internal revenue tax, for use in the arts and industries, and for fuel, light, and power, provided said alcohol shall have been mixed in the presence and under the direction of an authorized Government officer, after withdrawal from the distillery warehouse, with methyl alcohol or other denaturing material or materials, or admixture of the same, suitable to the use for which the alcohol is withdrawn, but which destroys its character as a beverage and renders it unfit for liquid medicinal purposes; such denaturing to be done upon the application of any registered distillery in denaturing bonded warehouses specially designated or set apart for denaturing purposes only, and under conditions prescribed by the Commissioner with the approval of the Secretary.

The character and quantity of the said denaturing material and the conditions upon which said alcohol may be withdrawn free of tax shall be prescribed by the Commissioner, who shall, with the approval of the Secretary, make all necessary regulations for carrying into effect the provisions of this subsection.

Distillers, manufacturers, dealers and all other persons furnishing, handling or using alcohol withdrawn from bond under the provisions of this section shall keep such books and records, execute such bonds and render such returns as the Commissioner, with the approval of the Secretary, may by regulation require. Such books and records shall be open at all times to the inspection of any internal revenue officer or agent.

(b) *For use in manufacture of chemicals.* Notwithstanding anything contained in subsection (a), domestic alcohol when suitably denatured may be withdrawn from bond without the payment of internal revenue tax and used in the manufacture of ether and chloroform and other definite chemical substances where said alcohol is changed into some other chemical substance and does not appear in the finished product as alcohol. Rum of not less than one hundred and fifty degrees proof may be withdrawn, for denaturation only, in accordance with the provisions of subsection (a).

* * * * *

26 U. S. C. 3072 UNLAWFUL USE OR CONCEALMENT OF DENATURED ALCOHOL.

Any person who withdraws alcohol free of tax under the provisions of section 3070 (a) and regulations made in pursuance thereof, and who removes or conceals same, or is concerned in removing, depositing or concealing same for the purpose of preventing the same from being denatured under governmental supervision, and any person who uses alcohol withdrawn from bond under the provisions of said section for manufacturing any beverage or liquid medicinal preparation, or knowingly sells any beverage or liquid medicinal preparation made in whole or in part from such alcohol, or knowingly violates any of the provisions of section 3070 (a) or 3073, or (except as provided in section 3073) who shall recover or attempt to recover by redistillation or by any other process or means, any alcohol rendered unfit for beverage or liquid medicinal purposes under the provisions of section 3070 (a), or who knowingly uses, sells, conceals, or otherwise disposes of alcohol so recovered or redistilled, shall on conviction of each offense be fined not more than $5,000, or be imprisoned not more than five years, or both, and shall, in addition, forfeit to the United States all personal property used in connection with his business, together with the buildings and lots or parcels of ground constituting the premises on which said unlawful acts are performed or permitted to be performed.

26 U. S. C. 3073 RECOVERY OF SPIRITS FOR REUSE IN MANUFACTURE.

(a) *Regulations.* Manufacturers employing processes in which alcohol, used free of tax under the provisions of section 3070 (a), is expressed or evaporated from the articles manufactured, shall be permitted to recover such alcohol and to have such alcohol restored to a condition suitable solely for reuse in manufacturing processes under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

26 U. S. C. 3111 TAXABILITY OF DENATURED ALCOHOL OR ARTICLES PRODUCED, TRANSFERRED, USED, OR SOLD IN VIOLATION OF LAW OR REGULATIONS.

Any person who shall produce, withdraw, sell, transport, or use denatured alcohol, denatured rum, or articles in violation of laws or regulations now or hereafter in force pertaining thereto, and all such denatured alcohol, denatured rum, or articles shall be subject to all provisions of law pertaining to alcohol that is not denatured, including those requiring the payment of tax thereon; and the person so producing, withdrawing, selling, transporting, or using the denatured alcohol, denatured rum, or articles shall be required to pay such tax.

26 U. S. C. 3114 ALCOHOL PERMITS.

* * * * *

(c) *Inaccurate description of denatured articles.* Whenever the Commissioner has reason to believe that denatured alcohol, denatured rum, or articles do not correspond with the descriptions and limitations as to such alcohol, rum, or articles provided by law and regulations, he shall cause an analysis of said alcohol, rum, or articles to be made, and if upon such analysis the Commissioner shall find that said alcohol, rum, or articles do not so correspond, he shall give not less than fifteen days' notice in writing to the person who is the manufacturer thereof to show cause why said alcohol, rum, or articles should not be dealt with as other distilled spirits, such notice to be served personally or by registered mail, as the Commissioner may determine, and shall specify the time when, the place where, and the name of the agent or official before whom such person is required to appear.

If the manufacturer of said alcohol, rum, or articles fails to show to the satisfaction of the Commissioner that the alcohol, rum, or articles manufactured by him correspond to the descriptions and limitations as to such alcohol, rum, or articles provided by law and regulations, his permit to manufacture and sell the same shall be revoked. The manufacturer may by appropriate proceeding in a court of equity have the action of the Commissioner reviewed, and the court may affirm, modify, or reverse the finding of the Commissioner as the facts and law of the case may warrant, and during the pendency of such proceedings may restrain the manufacture, sale, or other disposition of such alcohol, rum, or articles.

* * * * *

26 U. S. C. 3170 TRANSFER AND DELEGATION OF POWERS.

The Secretary is authorized to confer and impose upon the Commissioner and any of his assistants, agents, or employees, and upon any other officer, employee, or agent of the Treasury Department, any of the rights, privileges, power, duties, and protection conferred or imposed upon the Secretary, or any officer or employee of the Treasury Department, by any law now or hereafter in force relating to the taxation, exportation, transportation, manufacture, possession, or use of, or traffic in, distilled spirits, wine, fermented liquors, or denatured alcohol.

26 U. S. C. 3171 RECORDS, STATEMENTS, AND RETURNS.

(a) *Requirements.* Every person liable to any tax imposed by this chapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see section 3170.

[1] The sections of the United States Code are numbered identically with corresponding sections of the Internal Revenue Code.

26 U. S. C. 3176 RULES AND REGULATIONS.

(a) *Power of Commissioner.* The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

(b) *Transfer of duties.* For transfer of powers and duties of Commissioner and his agents, see section 3170.

26 U. S. C. 3791 RULES AND REGULATIONS.

(a) *Authorization—(1) In general.* Except as provided in section 1928 (a), Cotton Futures, section 2599, Marihuana, section 2559, Narcotics, section 3176, Liquor, and section 1805, Silver, the Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

(2) *In case of change in law.* The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

26 U. S. C. 3809 VERIFICATION OF RETURNS: PENALTIES OF PERJURY.

(a) *Penalties.* Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(b) *Signature presumed correct.* The fact that an individual's name is signed to a return, statement, or other document filed shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

(c) *Verification in lieu of oath.* The Commissioner, under regulations prescribed by him with the approval of the Secretary, may require that any return, statement, or other document required to be filed under any provision of the internal revenue laws shall contain or be verified by a written declaration that it is made under the penalties of perjury, and such declaration shall be in lieu of any oath otherwise required.

SUBPART A—SCOPE OF REGULATIONS

§ 187.1 *Denaturation and withdrawal.* These regulations, Regulations 16, "Denaturation of Rum" (26 CFR Part 187), contain the procedural and substantive requirements relative to the denaturation of rum and its withdrawal from the distillery denaturing bonded warehouse. The regulations cover the location, construction, equipment, action by the district supervisor and Commissioner; control, custody, and supervision of warehouse; transfer of rum to warehouse, and the denaturation of rum; the disposition of denatured rum; and, concerning the use, exportation, shipment, losses, records and reports, of rum and denatured rum.

§ 187.2 *Sale and use.* The sale of denatured rum by dealers, and the use thereof by manufacturers, shall be in accordance with the provisions of Regulations 3 (26 CFR Part 182).

SUBPART B—DEFINITIONS

§ 187.10 *Meaning of terms.* As used in this part, unless the context otherwise requires, terms shall have the meanings ascribed in this subpart.

§ 187.11 *Collector.* "Collector" shall mean the collector of internal revenue.

§ 187.12 *Commissioner.* "Commissioner" shall mean the Commissioner of Internal Revenue.

§ 187.13 *Distillery denaturing bonded warehouse.* "Distillery denaturing bonded warehouse" or "denaturing bonded warehouse" shall mean a bonded warehouse established or operated under the provisions of this part on the premises of a registered distillery for the denaturation of rum of not less than 150 degrees of proof produced at such distillery.

§ 187.14 *Distillery premises.* "Distillery premises" shall mean the lot or tract of land described in the distiller's notice, Form 27–A, on which the distillery is located.

§ 187.15 *District supervisor.* "District supervisor" or "supervisor" shall mean the person having charge of a supervisory district of the Alcohol Tax Unit of the Bureau of Internal Revenue.

§ 187.16 *Gallon.* "Gallon" or "wine gallon" shall mean a United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

§ 187.17 *Including.* The word "including" shall not be deemed to exclude things other than those enumerated which are in the same general class.

§ 187.18 *Inclusive language.* Words in the plural form shall include the singular, and vice versa, and words in the masculine gender shall include females, associations, copartnerships, and corporations.

§ 187.19 *I. R. C.* "I. R. C." shall mean the Internal Revenue Code.

§ 187.20 *Person.* "Person" shall include natural persons, associations, copartnerships, and corporations.

§ 187.21 *Proof.* "Proof" shall mean the ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

§ 187.22 *Proof gallon.* "Proof gallon" shall mean the alcoholic equivalent of a United States gallon at 60 degrees Fahrenheit, containing 50 percent of ethyl alcohol by volume.

(53 Stat. 307; 26 U. S. C. 2809)

§ 187.23 *Proprietor.* "Proprietor" shall mean the operator of a distillery denaturing bonded warehouse, unless otherwise indicated.

§ 187.24 *Rum.* "Rum" shall mean any alcoholic distillate from the fermented juice of sugarcane, sugarcane sirup, sugarcane molasses, or other sugarcane byproducts distilled at less than 190 degrees of proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to rum, and withdrawn at not less than 150 degrees of proof.

§ 187.25 *Secretary.* "Secretary" shall mean the Secretary of the Treasury.

§ 187.26 *Tank car.* "Tank car" shall mean a railroad tank car conforming to the requirements of this part.

§ 187.27 *U. S. C.* "U. S. C." shall mean the United States Code.

SUBPART C—LOCATION

§ 187.35 *On distillery premises.* Distillery denaturing bonded warehouses for the denaturation of rum of not less than 150 degrees of proof may be established by the proprietor of a registered distillery only, and such warehouse must be located on the distillery premises.

SUBPART D—CONSTRUCTION

§ 187.40 *Buildings.* The buildings or rooms constituting the distillery denaturing bonded warehouse must be securely constructed of brick, stone, wood, concrete, or other substantial material and must be completely separated from contiguous buildings or rooms by solid, unbroken walls or partitions of substantial construction extending from the ground or floor to the roof or ceiling: *Provided,* That necessary openings may be permitted in such walls or partitions for the passage of approved steam, water, electric, sewer, or similar lines, and for the passage of approved pipelines for the conveyance of rum to the denaturing bonded warehouse. The foundations, floors, walls, and roofs and the doors, windows, and other openings shall be constructed, and such doors, windows, and other openings shall be protected and secured, in accordance with the requirements, insofar as applicable, of Regulations 10 (26 CFR Part 185), relating to internal revenue bonded warehouses; and the means of ingress to and egress from the denaturing bonded warehouse shall conform to the requirements of such part.

§ 187.41 *Denaturing material storeroom.* The proprietor must provide within the denaturing bonded warehouse a denaturing material storeroom for use solely for the storage of denaturing materials, except that this requirement shall not apply where permanently fixed metal tanks of such size that they cannot be readily removed and so constructed that they can be securely locked with a Government lock, are installed within the denaturing bonded warehouse for the storage of the denaturing materials. The proprietor shall place over the entrance door of the room a sign bearing, in plain and legible letters, the words "Denaturing Material Storeroom." If more than one such storeroom is provided, each shall be given an alphabetical designation, which shall appear on the sign. If denaturants are stored in original packages or other portable receptacles, a denaturing material storeroom must be provided. The walls of the denaturing material storeroom must be securely constructed of substantial materials and extend from the floor to the ceiling. The entrance door of such storeroom must open into the denaturing bonded warehouse, and be so equipped that it may be securely locked with a Government lock. All other doors of such storeroom must be locked on the

inside of the room with Government locks.

§ 187.42 *Rum storeroom.* Where rum is received in barrels, drums, or similar containers, the proprietor must provide within the denaturing bonded warehouse a rum storeroom for use solely for the storage of rum, unless all rum received in such containers is immediately transferred into rum storage or mixing tanks provided in accordance with § 187.63. The rum storeroom must be constructed in accordance with the requirements of § 187.40. The entrance door of such storeroom must be so equipped that it may be securely locked on the outside of the room with a Government lock. The proprietor shall place over the entrance door of the room a sign bearing, in plain and legible letters, the words "Rum Storeroom." If more than one such storeroom is provided, each shall be given an alphabetical designation, which shall appear on the sign.

§ 187.43 *Specially denatured rum storeroom.* Where specially denatured rum is retained on the premises in barrels, drums, cans, or similar containers, the proprietor must provide on the denaturing bonded warehouse premises a separate room (or building) for use solely for the storage of specially denatured rum. The specially denatured rum storeroom must be constructed in accordance with the requirements of § 187.40. The entrance door of such storeroom must be so equipped that it may be securely locked on the outside of the room with a Government lock. The proprietor shall place over the entrance door of the specially denatured rum storeroom a sign bearing, in plain and legible letters, the words "Specially Denatured Rum Storeroom." If more than one such storeroom is provided, each shall be given an alphabetical designation, which shall appear on the sign.

§ 187.44 *Empty container storeroom.* If empty barrels or other containers are to be stored in the denaturing bonded warehouse, a separate room must be provided for such purpose. Such room shall not have any means of interior communication with any other part of the denaturing bonded warehouse. This room may be used for general cooperage purposes.

§ 187.45 *Government cabinet.* There shall be provided in the denaturing bonded warehouse a metal cabinet of adequate strength and size, suitably equipped for locking with a Government seal lock, for use in safeguarding the keys of Government locks, seals, records, and other Government property: *Provided*, That where a cabinet of sufficient size conforming to these specifications is installed in the Government office for the distillery or internal revenue bonded warehouse, and such office is so located that the cabinet therein will be readily accessible to Government officers assigned to the denaturing bonded warehouse, a separate cabinet in the denaturing bonded warehouse will not be required. Each Government cabinet shall be subject to approval by the district supervisor.

Subpart E—Sign

§ 187.55 *Posting of sign.* The proprietor shall place and keep conspicuously on the outside and at the front of the denaturing bonded warehouse where it can be plainly seen, a sign exhibiting in plain and legible letters painted in oil colors or gilded, not less than 3 inches in height, and of a proper and proportionate width, the name of the proprietor and the words "Distillery Denaturing Bonded Warehouse," followed by the registered number of the warehouse. If the warehouse consists of two or more buildings, the required sign will be placed over the entrance of each building, and there shall also be shown on such sign the alphabetical designation of the building.

Subpart F—Equipment

§ 187.60 *Scales.* The proprietor of the denaturing bonded warehouse must provide suitable and accurate scales for weighing rum gauged in packages and specially denatured rum drawn into packages. The beams or dials of such scales must indicate weight in half-pound graduations.

§ 187.61 *Weighing tanks.* Where rum received in packages, or by pipeline is transferred into storage or mixing tanks, the proprietor must provide in the denaturing bonded warehouse one or more suitable weighing tanks, constructed and marked in accordance with the provisions of Regulations 4 (26 CFR Part 183), to weigh such rum upon its receipt: *Provided*, That where rum received by pipeline is weighed in the distillery or internal revenue bonded warehouse prior to transfer, it need not be weighed again in the distillery denaturing bonded warehouse prior to deposit in storage or mixing tanks.

§ 187.62 *Test weights.* The proprietor shall provide a set of test weights conforming to the requirements of Regulations 4 (26 CFR Part 183), unless he has provided such test weights at the distillery or at an internal revenue bonded warehouse on the same or contiguous premises or at a rectifying plant or tax-paid bottling house on contiguous premises. Such test weights shall be under the control and in the custody of the storekeeper-gauger in charge, who shall keep them under Government lock when not in use.

§ 187.63 *Tanks.* Rum storage tanks, denaturing material storage tanks, mixing tanks, denatured rum tanks, and other similar tanks shall be constructed and secured in conformity with the provisions of Regulations 4 (26 CFR Part 183). Each tank shall have plainly and legibly painted thereon its designated use, such as "Rum Storage Tank," "Denaturing Material Storage Tank," etc., followed by its serial number and capacity in gallons.

§ 187.64 *Pipelines.* Pipelines for the conveyance of rum to and from storage, weighing, or gauge tanks; rum and denaturants to mixing tanks; and denatured rum from mixing tanks and to and from denatured rum storage tanks; shall be of a fixed and permanent character, constructed, secured, and exposed to view throughout their entire lengths, in conformity with the requirements, insofar as applicable, of Regulations 10 (26 CFR Part 185), relating to internal revenue bonded warehouses. Pipelines for the conveyance of other substances shall not be permanently connected with such tanks.

§ 187.65 *Colors for pipelines.* The pipelines in the denaturing bonded warehouse used for conveying the following substances shall be kept painted in the colors indicated:

Black	Rum.
Dark green	Denatured rum.
Light green	Denaturants.
White	Water.
Aluminum	Steam.
Orange	Air.

These colors are intended for such pipelines only, and are prescribed for the purpose of distinguishing such pipelines from each other and from all other pipelines on the premises which are painted but for which colors are not prescribed. The painting in one of the prescribed colors, or a color similar thereto, of a pipeline for which a color is not prescribed, is prohibited. Pipelines for which colors are not prescribed may be painted in sections of contrasting colors.

§ 187.66 *General.* The applicable provisions of Regulations 10 (26 CFR Part 185), concerning details of construction and equipment, and the construction and equipment of existing warehouses, shall apply to distillery denaturing bonded warehouses.

Subpart G—Qualifying Documents

§ 187.75 *Application, Form 571.* Every person engaged in the business of operating a registered distillery or intending to engage therein, who desires to establish a distillery denaturing bonded warehouse on the distillery premises, shall file application therefor on Form 571, in triplicate, with the district supervisor. Except as provided in § 187.79, in the case of amended and supplemental applications, all of the information indicated by the headings of the various columns and lines on the form, and the instructions printed thereon, or issued in respect thereto and as required by this part, shall be furnished. Applications on Form 571 must be signed in accordance with the instructions printed on the form and sworn to before an officer authorized to administer oaths: *Provided*, That if the form officially prescribed for such application contains therein a provision for verification by a written declaration that such application is made under penalties of perjury, such application shall be verified by the execution of such declaration, and such declaration so executed shall be in lieu of the oath required herein for verification. Such applications must be numbered serially, commencing with number 1 and continuing in regular sequence for all applications thereafter filed, whether amended or supplemental.

(63 Stat. 667; 26 U. S. C. 3809)

§ 187.76 *Description of warehouse.* The application shall contain a complete

description of the buildings or rooms constituting the warehouse, in accordance with the requirements, insofar as applicable, of Regulations 4 (26 CFR Part 183).

§ 187.77 *Description of tanks.* Rum storage tanks, weighing tanks, denaturing material storage tanks, mixing tanks, and denatured rum tanks shall be described in the application, Form 571, the designation, serial number, and capacity in gallons of each being shown.

§ 187.78 *Capacity.* The estimated maximum quantity, in proof gallons, of rum to be received in the denaturing bonded warehouse during a period of 30 days shall be stated in the application.

§ 187.79 *Amended and supplemental applications.* The provisions of Regulations 4 (26 CFR Part 183), regarding the filing of amended and supplemental applications, shall apply to Form 571.

§ 187.80 *Corporate documents.* Where the applicant is a corporation there must be submitted with and made a part of the application, Form 571, certified copies, in triplicate, of the supporting documents described in Regulations 4 (26 CFR Part 183), unless such documents were filed with and made a part of the distiller's notice, Form 27–A, in which event a statement, in triplicate, to that effect may be submitted in lieu of a separate set of such documents.

§ 187.81 *Articles of copartnership or association.* Where the applicant is a copartnership or association there must be submitted with and made a part of the application, Form 571, certified copies, in triplicate, of the articles of copartnership or association, if any, unless certified copies of such articles were filed with and made a part of the distiller's notice, Form 27–A, in which event a statement, in triplicate, to that effect may be submitted in lieu of a separate set of such articles.

§ 187.82 *Power of attorney.* The provisions of Regulations 4 (26 CFR Part 183), concerning powers of attorney, shall apply to proprietors of distillery denaturing bonded warehouses: *Provided*, That where a power of attorney has been filed in connection with the distiller's notice, Form 27–A, and supporting documents, and the terms of such power of attorney are broad enough to cover the execution of documents required for the denaturing bonded warehouse, a statement, in triplicate, regarding such filing of the power of attorney may be submitted with the denaturing bonded warehouse application, Form 571, and supporting documents, in lieu of additional copies of the power of attorney.

§ 187.83 *Bond, Form 572.* Every person desiring the establishment of a distillery denaturing bonded warehouse on his distillery premises shall, upon filing his application, Form 571, execute bond on Form 572, in triplicate, with surety or supported by collateral security, and file the same with the district supervisor. Bonds on Form 572, and consents of surety to changes in the terms thereof, shall conform to the requirements of Regulations 10 (26 CFR Part 185), the provisions of which part are hereby extended, insofar as applicable, to bonds and consents of surety required of proprietors of distillery denaturing bonded warehouses.

§ 187.84 *Penal sum.* The penal sum of the distiller's denaturing warehouse bond, Form 572, shall be not less than the amount of internal revenue tax at the rate prescribed by law on the maximum quantity of rum that will be withdrawn and transferred to the denaturing bonded warehouse for denaturation during any calendar month, plus the quantity, either undenatured or specially denatured, which may remain on hand at the beginning of the month, but in no case shall the penal sum of the bond be less than $5,000 or more than $100,000.

§ 187.85 *Plat and plans.* Every person desiring the establishment of a distillery denaturing bonded warehouse on his distillery premises must submit to the district supervisor with his application, Form 571, accurate copies of the plat of the distillery premises and accurate plans of the denaturing bonded warehouse buildings, apparatus, and equipment, in triplicate. The plat and plans shall conform to the requirements of Regulations 10 (26 CFR Part 185), the provisions of which part are hereby extended, insofar as applicable, to plats and plans required of proprietors of distillery denaturing bonded warehouses.

§ 187.86 *Additional information.* The Commissioner or the district supervisor may at any time, in his discretion, require the proprietor to furnish such additional information as he may deem necessary.

§ 187.87 *Instruments and papers.* The terms, conditions, and instructions contained in instruments and papers required to be furnished by law or regulations are hereby made a part of this part as fully and to the same extent as if incorporated herein.

Subpart H—Requirements Governing Changes in Name, Proprietorship, Control, Location, Premises, and Equipment, and in the Title to the Premises

§ 187.95 *Procedure.* The procedure prescribed in Regulations 4 (26 CFR Part 183), governing changes in name, proprietorship, control, location, premises, and equipment, and in the title to the distillery premises, or the encumbrance thereof, is hereby extended, insofar as applicable, to distillery denaturing bonded warehouses.

Subpart I—Action by District Supervisor

§ 187.100 *Procedure applicable.* The provisions of Regulations 4 (26 CFR Part 183), respecting action by the district supervisor in connection with the establishment, and changes subsequent to establishment, of distilleries are hereby extended, insofar as applicable, to distillery denaturing bonded warehouses.

Subpart J—Action by Commissioner

§ 187.110 *Procedure applicable.* The provisions of Regulations 4 (26 CFR Part 183), respecting action by the Commissioner in connection with the establishment, and changes subsequent to establishment, of distilleries are hereby extended, insofar as applicable, to distillery denaturing bonded warehouses.

Subpart K—Termination of Bonds

§ 187.115 *Denaturing warehouse bonds.* Distillers' denaturing warehouse bonds, Form 572, may be terminated as to liability for rum transferred to the denaturing bonded warehouse after a specified, future date pursuant to application by the surety; for transactions subsequent to the effective date of an approved superseding bond; or for future transactions upon discontinuance of business by the principal after denaturation of all rum withdrawn or possessed under the bond and the lawful removal of all denatured rum from the warehouse.

§ 187.116 *Procedure.* The termination of such bonds and the release of collateral deposited in support thereof shall be in accordance with the conditions specified in § 187.115 and with the applicable procedure prescribed by Regulations 10 (26 CFR Part 185) for the termination of bonds and the release of collateral deposited to support the same: *Provided*, That the district supervisor's inquiry shall determine whether all rum withdrawn or possessed and all specially denatured rum manufactured or possessed, while the bond was in effect, have been duly accounted for; and the release of collateral need not be deferred for a period of 6 months from the date of determination that there is no outstanding liability against the bond.

Subpart L—Control, Custody, and Supervision

§ 187.125 *Control of warehouse.* Every distillery denaturing bonded warehouse shall be under the control of the supervisor of the district in which such warehouse is located.

§ 187.126 *Custody of warehouse.* Each distillery denaturing bonded warehouse shall be in the joint custody of the storekeeper-gauger and of the proprietor, and shall at no time be unlocked or opened or remain open when rum or denatured rum is present therein, except in the presence of the storekeeper-gauger. The keys to all Government locks shall remain at all times in the custody of the storekeeper-gauger or of the district supervisor or other officer designated by him. The storekeeper-gauger having custody of such keys will not permit any other person, except the district supervisor or other authorized officer, to secure possession of them.

§ 187.127 *Admittance of proprietor.* The proprietor shall upon request at reasonable times have admittance, in the presence of the storekeeper-gauger, to the warehouse. The warehouse shall not be opened on Sunday or at night, except in cases of emergency, and then only with the approval of the district supervisor: *Provided*, That where the rum is in imminent danger of loss by fire, flood, or other casualty, and it is impracticable to first obtain authorization from the district supervisor for the opening of the warehouse, the storekeeper-

gauger may, upon the request of the proprietor, open the warehouse for the purpose of preventing loss of the rum, but a report thereof must be made immediately, by telephone or telegraph where possible, to the district supervisor: *And provided further*, That where the rum is in imminent danger of loss by fire, and it is impracticable to first communicate with the district supervisor or the storekeeper-gauger, city and State fire officers may break open the warehouse for the purpose of preventing loss of the rum, but a similar report thereof must be made immediately to the district supervisor.

§ 187.128 *Storekeeper-gauger to supervise operations.* The distillery denaturing bonded warehouse will be operated under the supervision of the storekeeper-gauger assigned to the distillery or the internal revenue bonded warehouse: *Provided*, That where operations at the distillery or the internal revenue bonded warehouse are such that the officer or officers assigned thereto cannot adequately supervise the operations at the denaturing bonded warehouse, the district supervisor will assign one or more officers to the denaturing bonded warehouse in order that the required supervision may be maintained.

§ 187.129 *Examination of warehouse.* The storekeeper-gauger charged with the duty of supervising the operations of the denaturing bonded warehouse will, prior to commencement of operations, examine the warehouse and its equipment and will determine that the doors, windows, and other openings are properly protected and equipped for locking; that the inlets, outlets, and other necessary openings of rum storage tanks, weighing tanks, mixing tanks, denaturing material tanks, and denatured rum tanks, and valves in pipelines, are properly equipped for locking; that the Government cabinet is so equipped that the door thereto may be securely locked with a Government seal lock; and that all tanks, pipelines, pipeline connections, and other equipment conform to the requirements of this part. The storekeeper-gauger will apply Government locks and seals wherever the same are required.

Subpart M—Transfer of Rum to Warehouse

§ 187.135 *Methods of transfer.* Rum of not less than 150 degrees of proof may be transferred for denaturation to a distillery denaturing bonded warehouse located on the distillery premises:

(a) By pipeline direct from the distillery receiving cisterns through weighing tanks to storage or mixing tanks in the denaturing bonded warehouse;

(b) By pipeline from the distillery receiving cisterns through weighing tanks to storage tanks in an internal revenue bonded warehouse on the distillery premises and from such warehouse storage tanks through weighing tanks to storage or mixing tanks in the denaturing bonded warehouse; or

(c) In original packages, from an internal revenue bonded warehouse on the distillery premises, if such rum was produced at the distillery on the same premises.

(53 Stat. 335, as amended; 26 U. S. C. 2883)

§ 187.136 *Application, Form 573.* When the proprietor desires to transfer rum of not less than 150 degrees of proof to the denaturing bonded warehouse for denaturation, he will file application therefor with the storekeeper-gauger in charge on Form 573, in triplicate. Where the rum is to be transferred by pipeline, the applicant shall specify on Form 573 the maximum number of tax gallons to be so transferred.

§ 187.137 *Sufficiency of bond.* Where the bond covering operation of a denaturing bonded warehouse is given in less than the maximum penal sum of $100,000, the district supervisor will inform the storekeeper-gauger in charge of the penal sum of the bond, and the storekeeper-gauger will see that the quantity of rum transferred to the denaturing bonded warehouse is within the limits of the bond.

§ 187.138 *Report of gauge, Form 1520; packages.* If the rum described in the application, Form 573, is in packages, Form 1520 will be prepared by the proprietor, pursuant to Regulations 10 (26 CFR Part 185). The storekeeper-gauger will verify by reference to his records, the entries in the headings thereof and the details of the entry gauge transcribed thereto. A careful gauge will be made of all packages, except that rum in original packages may be transferred to the denaturing bonded warehouse on the original gauge, if such transfer is made within 30 days of the date of the original entry for deposit. The storekeeper-gauger will enter on Form 1520 the weights and proofs found on gauge and will return the form to the proprietor for completion. Upon completion, the Form 1520 will be returned to the storekeeper-gauger for verification and signature. Where packages of rum are transferred to the denaturing bonded warehouse on the original gauge, the proprietor will copy the details of such gauge on Form 1520. When rum for denaturation is transferred in packages, a careful inspection of such packages will be made prior to transfer, and where evidence of tampering or unusual loss is found, the provisions of Regulations 10 (26 CFR Part 185), relative to losses of distilled spirits in bond will be followed.

§ 187.139 *Report of gauge, Form 1520; pipeline transfers.* Where the rum described in the application, Form 573, is to be transferred from distillery receiving cisterns or warehouse storage tanks, it will be run into a weighing or gauging tank and carefully gauged. Where no weighing or gauging tank is provided in the distillery or internal revenue bonded warehouse, the rum may be gauged in a weighing tank in the denaturing bonded warehouse, in which case the rum shall be run directly from the receiving cistern or storage tank to a weighing tank in the denaturing bonded warehouse. The storekeeper-gauger will prepare Form 1520, in triplicate, and enter the details of the gauge thereon.

(53 Sat. 335, as amended; 26 U. S. C. 2883)

§ 187.140 *Transfer of rum.* Upon completion of the gauge and Form 1520, the storekeeper-gauger will permit the rum to be transferred to the denaturing bonded warehouse. If the rum is in packages the proprietor will, under the supervision of the storekeeper-gauger and before removal of the rum to the denaturing bonded warehouse, stencil upon the head of each package, in letters and figures large enough to be easily read, the words, "For Denaturation," followed by the date of removal to the denaturing bonded warehouse.

§ 187.141 *Supervision of transfers.* The transfer of rum from the distillery or internal revenue bonded warehouse to the denaturing bonded warehouse will be made under the supervision of the storekeeper-gauger. Where rum is so transferred by pipeline, the storekeeper-gauger supervising the deposit of the rum in a storage, weighing, or mixing tank in the denaturing bonded warehouse will see that the outlet and all other openings of such tank, except the inlet, are closed and locked and that the valves in the pipeline are so adjusted by the proprietor as to control the flow of rum into the tank before the outlet of the distillery receiving cistern or weighing tank, or the warehouse storage or gauging tank from which the rum is to be transferred is unlocked. When the rum has been deposited in the tank in the denaturing bonded warehouse the inlet of such tank and the outlets of the pipeline and the distillery receiving cistern or weighing tank, or warehouse storage or gauging tank will be immediately closed by the proprietor and locked by the storekeeper-gauger. The valves on the pipelines, and the openings of tanks containing rum or specially denatured rum, shall be kept closed and locked at all times, except when required to be open for the transfer of rum or specially denatured rum or for other necessary purposes. Whenever rum or specially denatured rum is to be transferred into or out of tanks the storekeeper-gauger will open and close the locks, but it shall be the duty of the proprietor to manipulate the stopcocks or valves controlling the flow of the rum. The storekeeper-gauger will not permit the transfer of rum from the distillery cistern room or the internal revenue bonded warehouse to the denaturing bonded warehouse by pipeline unless the use of such pipeline has been approved in accordance with the provisions of this part.

§ 187.142 *Disposition of Forms 573 and 1520.* Upon the transfer of the rum, the storekeeper-gauger will execute his certificate of gauge and transfer on each copy of Form 573, retain one copy of Form 573, with Form 1520 attached, deliver one copy of each to the proprietor and forward one copy of each to the district supervisor.

Subpart N—Formula for Denaturation of Rum

§ 187.155 *Special Formula No. 4.* The following formula is prescribed for the denaturation of rum:

SPECIAL FORMULA NO. 4

To every 100 gallons of rum of not less than 150 degrees of proof add 1 gallon of the following solution: 5 gallons of an aqueous solution containing 40 percent nicotine; 3.6 ounces of methylene blue; water to make 100 gallons.

The denaturing solution must conform to the following analytical requirements:

Determination of nicotine. It must contain not less than 1.88 percent of nicotine when tested by the following process: 20 c. c. of the solution are measured into a 500 c. c. Kjeldahl flask provided with a suitable bulb tube, 10 c. c. of N/10 alkali added, the liquid made up to 50 c. c., and distilled in a current of steam until the distillate is no longer alkaline (about 500 c. c.). The distillate is then titrated with N/10 H_2SO_4, using rosolic acid or methyl red as an indicator. Not less than 25.2 c. c. should be required for the neutralization.

To determine the intensity of color. Of the denaturing solutions, 1 c. c. is diluted with 100 c. c. of water and 50 c. c. of this solution are compared in a 50 c. c. Nessler tube with 50 c. c. of a solution containing 5 grams of $CuSO_4.5H_2O$, C. P., in 100 c. c. of water.

Caution. It has been found that the above modified denaturing material when kept in closely stoppered containers loses its color, but when agitated in the presence of air the color returns. Therefore, officers should see that this material is thoroughly agitated in the presence of air, before being added to the rum to be denatured.

If the officer is in doubt, a standard color sample will be sent on request.

SUBPART O—DENATURING MATERIALS

§ 187.160 *Storage of denaturants.* Authorized denaturants may be brought on the denaturing bonded warehouse premises in any desired quantity if ample storage facilities have been provided, but the same must be immediately placed in the denaturing material storeroom or the denaturing material tanks. Denaturants which are used in small quantities may be stored in the original packages, in the denaturing material storeroom. All other denaturants must be deposited in the appropriate tanks or other approved receptacles. Each tank or other receptacle in which denaturants are stored, either within or without the denaturing material storeroom, must have plainly marked thereon the kind of denaturant contained therein.

§ 187.161 *Taking samples of denaturants.* Except as provided in § 187.169, the storekeeper-gauger in charge will take a 1-pint sample from each package or tank or other approved receptacle of mingled denaturants received or prepared, and will forward the same to the chemist authorized by the Commissioner to analyze such denaturants. Where a lot comprising a number of packages of the mingled denaturants is received or prepared, samples of equal quantities shall be taken from each package and mingled, and the 1-pint sample to be forwarded to the authorized chemist taken from such mixture. The sample to be submitted to the authorized chemist shall be taken from the denaturing solution of 100 gallons specified in the prescribed formula.

§ 187.162 *Container to be sealed.* After taking the sample the storekeeper-gauger will securely close and seal the tank or package from which it was obtained, and no part of the contents of such tank or package may be used until the sample has been officially tested and approved, and report on Form 1472 of such test is received by the storekeeper-gauger in charge of the plant.

§ 187.163 *Packaging samples of denaturants.* Samples of denaturants to be submitted by the storekeeper-gauger to the authorized chemist for analysis must be placed in heavy glass bottles or other suitable containers to be provided by the proprietor of the denaturing bonded warehouse, and such bottles or containers must be securely closed and a label (Form 1469) affixed thereto showing the name of the substance, serial number of the denaturing material tank or a description of the container from which the sample was taken, date it was taken, and the name of the officer forwarding it to the chemist. All samples of denaturants submitted for analysis must be sealed with wax by use of the seal furnished for such purpose or by a paper seal signed by the storekeeper-gauger. The authorized chemist shall not examine samples of denaturants brought to him unless they bear the seal of the Government officer.

§ 187.164 *Shipment of samples to authorized chemist.* The samples of denaturants, after being securely packed and sealed, shall be sent to the most convenient authorized chemist for examination and report. District supervisors will furnish proprietors of denaturing bonded warehouses and storekeeper-gaugers with the names and addresses of authorized chemists. All expenses in connection with the forwarding and testing of samples must be borne by the proprietor. A report of each sample submitted by the storekeeper-gauger for analysis shall be prepared by him on Form 1472, in triplicate, and forwarded to the authorized chemist.

§ 187.165 *Report of analysis by the chemist.* Upon completion of the analysis of the denaturants, the authorized chemist shall make a report of his analysis on the Form 1472, in triplicate, received from the storekeeper-gauger, note his approval or disapproval of the samples thereon, and sign the same. One copy of the Form 1472 shall be returned to the storekeeper-gauger in charge of the denaturing bonded warehouse, one copy shall be forwarded to the district supervisor of the district in which the warehouse is located, and the remaining copy shall be transmitted to the Commissioner.

§ 187.166 *Retention of samples.* The authorized chemist must retain all samples of rum denaturants for a period of 30 days so that they will be available for reference.

§ 187.167 *Approval of denaturants.* If the sample is approved the contents of the tank or package from which the same was taken shall, upon receipt of the chemist's report, become an approved denaturant and the storekeeper-gauger shall at once remove the seals from such tank or package and permit the denaturant to be used.

§ 187.168 *Treatment of disapproved denaturant.* Where a sample of denaturant does not conform to the prescribed specifications, the storekeeper-gauger shall, upon receipt of the chemist's report of disapproval, permit the proprietor, if he so desires, to treat or manipulate the proposed denaturant so as to render it suitable for use. Where the denaturant is so treated or manipulated, another sample must be submitted for approval. If the proprietor does not desire to further treat the denaturant, the storekeeper-gauger shall require him immediately to remove the denaturant from the premises.

§ 187.169 *Supplying denaturant to other proprietors.* Proprietors of distillery denaturing bonded warehouses will be permitted to supply approved denaturant, i. e., denaturing solution which has been tested and approved by the authorized chemist, to proprietors of other distillery denaturing bonded warehouses: *Provided*, That such denaturant is furnished in containers properly marked and sealed, with a certificate attached by the storekeeper-gauger in charge at the denaturing bonded warehouse making shipment or delivery of the denaturant. Such denaturant need not be further analyzed at the receiving denaturing bonded warehouse.

SUBPART P—DENATURATION OF RUM

§ 187.180 *General.* Only rum of not less than 150 degrees of proof may be denatured and the denaturation thereof must be done at a distillery denaturing bonded warehouse and in strict conformity with the prescribed formula. No rum may be denatured except in the immediate presence of the storekeeper-gauger assigned to supervise the operation of the denaturing bonded warehouse.

§ 187.181 *Notice, Form 576.* Whenever the proprietor of a denaturing bonded warehouse desires to manufacture denatured rum, he shall give notice to the storekeeper-gauger in charge on Form 576, in triplicate, furnishing all the information indicated by the headings of the various columns and lines on the form, and the instructions printed thereon or issued in respect thereto and as required by this part.

§ 187.182 *Denaturation.* Upon receipt of Form 576, properly executed, the storekeeper-gauger will see that the exact quantity of rum and the proper quantity of approved denaturants are conveyed directly to the mixing tank and that the same are thoroughly agitated and mixed therein before being drawn off for shipment or storage.

§ 187.183 *Measuring rum and denaturants.* All denaturants before being used must be carefully measured or weighed by the proprietor under the supervision of the storekeeper-gauger in previously tested receptacles or by scales provided by the proprietor; and all rum to be used, unless dumped from packages gauged within the preceding 30 days or received by pipeline and run directly into mixing tanks, must be carefully proofed and measured or weighed by the proprietor under the supervision of the storekeeper-gauger. The proprietor will provide accurate hydrometers and thermometers for his own use in determining

the proof of the rum, and will not use the Government owned instruments.

§ 187.184 *Responsibility of proprietor.* The proprietor will be held strictly accountable for any errors in the quantities of denaturants added. It is important that his determinations shall be absolutely correct. He must know that the measuring or weighing devices used by him are accurate.

§ 187.185 *Responsibility of storekeeper-gauger.* The storekeeper-gauger in charge must frequently apply, or cause to be applied, such tests to the measuring or weighing devices as will satisfy him that they are accurate. The accuracy of scales used for weighing packages will be determined by means of the test weights provided in accordance with § 187.62. Weighing tank scales shall be tested and their accuracy determined in accordance with the procedure prescribed in Regulations 4 (26 CFR Part 183). If the storekeeper-gauger finds the measures or scales to be inaccurate he shall refuse to permit their use until the proprietor has provided accurate measures or scales.

Subpart Q—Transfer of Denatured Rum to Storage or Shipping Containers

§ 187.195 *Kinds of containers.* Unless temporarily retained under Government lock in the mixing tank, denatured rum must, when the manufacture thereof is completed, be transferred to properly equipped denatured rum tanks and stored therein under Government lock, or drawn into packages or other portable containers for immediate shipment or storage in the specially denatured rum storeroom, or transferred to tank cars for immediate shipment.

§ 187.196 *Application to gauge, Form 577.* When the proprietor desires to draw denatured rum into packages or other portable containers, or into tank cars for shipment he shall file application on Form 577, in triplicate, with the storekeeper-gauger in charge for the gauging of such denatured rum. The denatured rum then will be drawn into packages or other portable containers, or run into a weighing tank, as the case may be, and gauged by the proprietor under supervision of the storekeeper-gauger. Upon completion of the gauge, the storekeeper-gauger will execute his report on Form 577, retain one copy of the form, deliver one copy to the proprietor, and forward one copy to the district supervisor.

Subpart R—Marking Containers of Specially Denatured Rum

MARKING PACKAGES

§ 187.200 *Serial number.* All packages containing specially denatured rum filled at a distillery denaturing bonded warehouse shall be numbered serially beginning with number 1 for the first package filled: *Provided,* That the series in current use at existing denaturing bonded warehouses will be continued. Where there is a change in the individual or corporate name, or in the trade name or style, or in the proprietorship of the business, the series in use at the time of such change will be continued.

(53 Stat. 307; 26 U. S. C. 2808)

§ 187.201 *Other required marks.* In addition to the serial number, there shall be placed upon the Government head of each package of specially denatured rum the name of the proprietor, registered number and location (city or town and State) of the denaturing bonded warehouse, the words, "Specially Denatured Rum," formula number, apparent proof, contents in wine gallons, and the date filled. Such marks and brands shall be plainly and durably marked or stenciled upon the package in a color contrasting with that of the surface upon which placed. The words "Specially Denatured Rum" shall be placed upon the package in conspicuous letters of not less than 1 inch in height, each letter being of the same size and color: *Provided,* That in the case of packages containing less than 5 wine gallons the words "Specially Denatured Rum" may be in letters of less than 1 inch in height, but must be as prominently displayed as is consistent with the size of the package. The required marks shall be placed upon the package by the proprietor, under the supervision of the storekeeper-gauger.

§ 187.202 *Additional marks.* There may be shown upon the Government heads of packages of denatured rum, in letters no more conspicuous or larger than those used in placing the required marks thereon, the brand name and a statement indicating the character of the product, but such additional marks shall not be so placed upon the Government head of the package as to unduly detract from the required marks thereon.

MARKING TANK CARS

§ 187.203 *Manner of marking.* Each tank car used for shipping specially denatured rum must have legibly marked or painted thereon its number, capacity in wine gallons, and the name or symbol of the owner. Tank cars into which specially denatured rum is transferred for shipment must also be constructed and labeled in accordance with Subpart V of this part.

Subpart S—Furnishing Samples of Denatured Rum

§ 187.210 *To whom samples may be furnished.* The proprietor of a distillery denaturing bonded warehouse may furnish samples of specially denatured rum to prospective applicants for permits to use specially denatured rum, who need not necessarily be then engaged in business; to applicants for permits to use specially denatured rum; and to holders of such permits, for experimental purposes and for use in preparing samples of products for submission to the Commissioner for analysis. Preparations made with samples of specially denatured rum may not be sold, unless Form 1479–A, giving the quantitative formula, and a sample of the preparation are submitted to and approved by the Commissioner, and permit on Form 1481 to use specially denatured rum in the manufacture of such preparation is procured from the district supervisor.

§ 187.211 *Application, Form 1512.* Application for the withdrawal of samples of specially denatured rum shall be made to the district supervisor on Form 1512, and proprietors of denaturing bonded warehouses may furnish samples of specially denatured rum only pursuant to Form 1512, duly approved by the district supervisor, except that where the quantity involved in any case does not exceed 8 fluid ounces application to or approval by the district supervisor will not be required, but the commercial records of the vendor must show each such transaction.

§ 187.212 *Quantity limitations.* District supervisors will not approve the withdrawal of samples of specially denatured rum in quantities in excess of 5 gallons, except that in extraordinary cases where the necessity for the withdrawal of larger quantities has been clearly demonstrated, district supervisors may authorize withdrawals in excess of 5 gallons, but not in excess of the quantity shown to be necessary.

§ 187.213 *Labeling and sealing samples.* All samples of specially denatured rum furnished by the proprietor of a denaturing bonded warehouse shall be sealed, and labeled to show the name and address of the proprietor, the formula number and, where furnished pursuant to Form 1512, the serial number of such form.

§ 187.214 *Record of samples.* All samples of specially denatured rum furnished by the proprietor pursuant to permits on Form 1512 shall be entered by the storekeeper-gauger on Form 575 in the same manner as other shipments of such denatured rum. The storekeeper-gauger will enter the serial number of the permit, Form 1512, in the appropriate column on Form 575, and, where Form 1512 bears the serial number of the applicant's basic permit in addition to its own serial number, the storekeeper-gauger will enter the serial numbers of both permits on Form 575. Where samples of 8 fluid ounces or less are furnished, entry thereof will be made on the proprietor's commercial records, as provided in § 187.211.

Subpart T—Disposition of Specially Denatured Rum

§ 187.225 *To permittees.* Except as otherwise provided in this part, the proprietor of a distillery denaturing bonded warehouse or a dealer in specially denatured rum may sell or dispose of specially denatured rum only to the person to whom a permit has been issued, in accordance with the provisions of Regulations 3 (26 CFR Part 182) authorizing the procurement thereof. Specially denatured rum may not be shipped on permits authorizing the procurement of specially denatured alcohol.

§ 187.226 *Permit authority for shipment.* The proprietor of a denaturing bonded warehouse or a dealer in specially denatured rum may ship or deliver specially denatured rum to qualified permittees in accordance with this part and Regulations 3 (26 CFR Part 182).

§ 187.227 *Withdrawal permits, Form 1477 or Form 1485.* When permits on Form 1477 or Form 1485, authorizing the procurement of specially denatured rum by bonded dealers or users, respectively, are issued by the district supervisor pursuant to application therefor, the district supervisor will forward the permit by

mail to the permittee. When a dealer or user desires to procure specially denatured rum, he will forward the withdrawal permit to the proprietor or dealer named therein from whom he desires to procure the specially denatured rum. Upon shipment, the proprietor or dealer will enter the shipment on the withdrawal permit and return it to the permittee, unless the proprietor or dealer has been authorized by the permittee to retain the permit for the purpose of making future shipments. No specially denatured rum may be shipped by a vendor named in the withdrawal permit until such permit is in his possession, and specially denatured rum may not be furnished in excess of the quantity set forth in the withdrawal permit.

§ 187.228 *Cancellation of withdrawal permit.* The person upon whose application, a permit on Form 1477 or Form 1485 has been issued, may at any time file request for the cancellation of such permit and the issuance of a new permit naming a new vendor or vendors. The district supervisor shall, upon receipt of such request, notify the proprietor of the denaturing bonded warehouse holding the permit to be superseded that the same has been canceled and that no more shipments or deliveries may be made to the vendee under such permit. The proprietor shall immediately forward the canceled permit to the district supervisor. Upon expiration of a withdrawal permit, it shall be returned to the district supervisor for cancellation. Where the withdrawal permit is in the possession of a vendor on the date of expiration, such vendor shall return it to the permittee for surrender to the district supervisor. Should a basic permit, Form 1476 (held by a dealer in specially denatured rum to whom withdrawal permit, Form 1477, was issued), or a basic permit, Form 1481 (held by a person to whom withdrawal permit, Form 1485, was issued), be terminated, surrendered, or revoked, each proprietor or dealer named as vendor in withdrawal permits, Forms 1477 or 1485, shall, upon notice from the district supervisor, make no further shipments thereunder, and if such withdrawal permit is in his possession, he shall return it to the district supervisor for cancellation.

§ 187.229 *Release of specially denatured rum for shipment.* When the proprietor desires to ship specially denatured rum pursuant to withdrawal permit on Form 1477 or Form 1485, he shall present such permit to the storekeeper-gauger for examination. If the officer finds that the permit authorizes the proposed shipment, he will permit shipment of the specially denatured rum.

Subpart U—Exportation of Specially Denatured Rum

§ 187.240 *Application, Form 1545.* Where the proprietor of a denaturing bonded warehouse desires to export specially denatured rum, he shall file application on Form 1545, in triplicate, with the district supervisor for a permit to export the same. The application, properly modified to cover the exportation of specially denatured rum by the proprietor of a denaturing bonded warehouse, must contain all of the information indicated by the lines on the form and the instructions printed thereon or issued in respect thereto and as required by this part. Form 1545 must be sworn to by an officer authorized to administer oaths: *Provided*, That if the form officially prescribed for such application contains therein a provision for verification by a written declaration that such application is made under the penalties of perjury, such application shall be verified by the execution of such declaration, and such declaration so executed shall be in lieu of the oath required herein for verification.

(63 Stat. 667; 26 U. S. C. 3809)

§ 187.241 *Consent of surety, Form 1533.* Before an application for a permit to export specially denatured rum may be approved, the proprietor must file with the district supervisor consent of surety, Form 1533, in triplicate, extending the terms of his denaturing warehouse bond, Form 572, to cover the exportation of such rum. The extension of the terms of the bond, if intended to cover the exportation of specially denatured rum from time to time shall be in the following form:

> The obligors hereby agree to extend the terms of said bond to cover all liability that may be incurred for and on account of all specially denatured rum hereafter withdrawn by the principal for exportation, for which satisfactory evidence of exportation and landing at a foreign port, or of loss on land or at sea, without fault or negligence on the part of the principal or his agents, is not furnished as provided by law or regulations now or hereafter in force.

The consent of surety may, if desired, be limited to cover the exportation of a specific lot of specially denatured rum, instead of being furnished in a continuing form, as provided in this section.

§ 187.242 *Permit to export.* If the application is properly prepared and the required consent of surety has been filed, and the bond, if given in less than the maximum penal sum, is sufficient to cover the tax on the specially denatured rum to be exported, plus the tax on the quantity of rum, either denatured or undenatured, on hand or unaccounted for, and if there is nothing to indicate that such rum will be used for any unlawful purpose, and proper certificates of clearance and landing have been filed for previous shipments, as required by this subpart, the district supervisor will approve the application, which thereupon becomes a permit. The district supervisor will then forward all copies of Form 1545 to the storekeeper-gauger in charge of the warehouse.

§ 187.243 *Consignment to collector of customs.* Upon receipt of the approved application and permit, Form 1545, by the storekeeper-gauger, and the marking of the packages as provided in this section and Subpart R of this part, the applicant may withdraw the specially denatured rum specified on the form and consign the same to the collector of customs at the port of export for exportation under his supervision. The applicant shall procure two copies of the bill of lading covering the shipment and submit them to the storekeeper-gauger, who will immediately forward one copy of Form 1545 with a copy of the bill of lading attached to the collector of customs and one copy of such form and bill of lading to the district supervisor, and will deliver the remaining copy of Form 1545 to the applicant. The storekeeper-gauger will, upon release of the specially denatured rum for shipment, make appropriate entry on Form 575 of the withdrawal thereof. The proprietor shall plainly and legibly stencil on the Government head of each package of specially denatured rum, before the same is released for exportation, the words "For Export," in addition to the marks required by Subpart R of this part.

§ 187.244 *Export entry; certificate of exportation, etc.* When the specially denatured rum arrives at the port of export, the exporter or his agent shall file immediately with the collector of customs an export entry and two copies of the export bill of lading; and when the vessel, railroad car, motor truck, or other conveyance on which the specially denatured rum is laden for exportation has cleared the port of export, the collector of customs shall execute the certificate of exportation on the copy of Form 1545 sent to him, and return the same with one copy of the bill of lading to the district supervisor.

§ 187.245 *Evidence of foreign landing.* The proprietor shall, within 30 days after the date of shipment of such specially denatured rum where exportation is made to Canada or Mexico, and within 90 days after the date of shipment where exportation is made to any other foreign country or possession, secure and forward to the district supervisor a certificate showing that the shipment was duly landed at the foreign port. The landing certificate shall be executed by a customs officer of the foreign country or possession to which the specially denatured rum is exported, unless it is shown that such country or possession has no customs administration, in which event the certificate shall be signed by the consignee or by the vessel's agent at the place of landing and sworn to before a notary public or other officer authorized to administer oaths, and having an official seal. Failure by the proprietor to produce within the specified time satisfactory evidence of the landing of the shipment of specially denatured rum at a foreign port, or of loss of the same on land or at sea after shipment, as provided in § 187.246, shall be sufficient grounds for refusal by the district supervisor to issue to the proprietor any further permits to export specially denatured rum, pending the filing of the required evidence of clearance and foreign landing, or of loss on land or at sea, of shipments previously made, or the assessment of tax or the enforcement of liability against the bond.

§ 187.246 *Proof of loss after clearance.* When the proprietor is unable to furnish proof of landing at a foreign port in consequence of loss on land or at sea after shipment, he shall file with the district supervisor issuing the permit, Form 1545, a statement setting forth

fully the cause and extent of the loss and all the pertinent facts and circumstances surrounding the same. Such statement must be accompanied by affidavits from two or more creditable and disinterested persons as to the loss. If the specially denatured rum was insured, the proprietor shall also file certificates by officers of the insurance company, or board of underwriters, that the insurance has been paid and that, to the best of their knowledge and belief, the specially denatured rum was destroyed on land or at sea after shipment. When obtainable, affidavits must be furnished by the master and mate of the vessel, conductor in charge of the railroad car, or operator of the motor truck or other conveyance, as the case may be, detailing the cause and extent of the loss and all pertinent facts and circumstances surrounding the same. Such proofs shall be furnished the district supervisor within the time provided in § 187.245 for furnishing proof of foreign landing, or within such further time as the district supervisor or Commissioner may deem reasonable.

§ 187.247 *Losses in transit to port of export.* Allowance for losses of specially denatured rum in transit from the denaturing bonded warehouse to the port of export will be made in accordance with provisions of Subpart W of this part.

§ 187.248 *Shipment to American Territories and possessions.* The provisions of this subpart and the forms prescribed by it, shall be applicable to the shipment of specially denatured rum to Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Panama Canal Zone. The shipment of specially denatured rum to or from Hawaii and Alaska shall be in accordance with the provisions of this part governing shipments entirely within the continental limits of the United States.

SUBPART V—SHIPMENT AND DELIVERY OF SPECIALLY DENATURED RUM

§ 187.260 *Tank trucks.* Deliveries of specially denatured rum by tank wagons or tank trucks are not permitted.

§ 187.261 *Packages.* Deliveries of specially denatured rum may be made in packages of any desired size to persons authorized to receive the same. The packages must be marked in accordance with the provisions of Subpart R of this part.

§ 187.262 *Tank cars.* Deliveries of specially denatured rum may also be made in railroad tank cars to persons authorized to receive the same: *Provided*, That deliveries may be made in tank cars only where the premises of the consignor and consignee are equipped with suitable railroad siding facilities. Railroad tank cars must be marked as provided in Subpart R of this part, and must be so constructed that all openings which would afford access to the contents may be closed and securely fastened and sealed. The tank car will be so closed and sealed by the proprietor under the supervision of the storekeeper-gauger immediately after it has been filled. The tank car will be sealed with railroad or other appropriate seals furnished by the proprietor.

§ 187.263 *Tank car label.* The proprietor of the denaturing bonded warehouse shall affix to each tank car of specially denatured rum a label showing the name of the proprietor, registered number and location (city or town and State) of the denaturing bonded warehouse, the name and location of the consignee, the quantity in wine gallons, the formula number, and the date withdrawn for shipment. The label will be in substantially the following form:

Shipped By
JOHN DOE RUM COMPANY
Denaturing Bonded Warehouse No. 1
New York, N. Y.
To
RICHARD ROE TOBACCO COMPANY
Baltimore, Md.
8,500 Gals. Specially Denatured Rum
Formula No. 4
Withdrawn May 17, 1949

The label shall be securely affixed to the route board of the car and shall be obliterated when the car is emptied.

§ 187.264 *Deliveries by proprietor.* The proprietor of a denaturing bonded warehouse shall make deliveries of specially denatured rum from his premises only in vehicles operated or controlled by him, or by a railroad or steamship company, or express company operating on a railroad or steamship line, or by a trucking company holding permit to transport specially denatured or tax-free alcohol. Where the specially denatured rum is delivered in vehicles operated or controlled by the proprietor, delivery must be made within 24 hours and the proprietor shall be responsible on his bond for the delivery of the specially denatured rum to the premises of the consignee. Where shipments of specially denatured rum are made by railroad, steamship or express company, or by a trucking company holding permit to transport specially denatured or tax-free alcohol, as provided in this section, the proprietor shall be responsible on his bond for delivery of the specially denatured rum to such carrier.

§ 187.265 *Report of shipment, Form 597.* Whenever specially denatured rum is shipped from the premises of a distillery denaturing bonded warehouse, the proprietor shall, at the time shipment is made, prepare a report thereof on Form 597 and immediately deliver the same to the storekeeper-gauger in charge. The report will be furnished in duplicate, except that one copy only need be furnished where the consignor and consignee are located in the same district. The proprietor will date the form and furnish all the information indicated by the headings of the various columns and lines in Part I. Where shipments are made in railroad tank cars, or consist of barrels or drums in carload lots, the name of the railroad, the number of the car, and the routing of the shipment shall be reported on Form 597. The consignor shall not change the routing without giving immediate notice of such action to the supervisor of his district.

§ 187.266 *Disposition of Form 597.* The storekeeper-gauger will, upon receipt of Form 597, check the same with the withdrawal permit and, if found to agree, will enter the shipment on Form 575 and date and initial Part II of each copy of Form 597. Where the consignee is located in another district the storekeeper-gauger will, on the same day he receives Form 597, forward one copy thereof to the supervisor of such district and one copy to the supervisor of the district from which the shipment is made. The supervisor of the district in which the consignee is located will check the copy of Form 597 sent to him with the monthly report of the consignee, execute Part III of the form, and forward the same to the supervisor of the district in which the consignor is located. The supervisor of the latter district will check the copy of Form 597 received from the supervisor of the other district with the storekeeper-gauger's report on Form 575, and will date and initial Part II of Form 597. Where the consignor and consignee are located in the same district the storekeeper-gauger will, on the same day he receives Form 597, forward the same to the supervisor of the district. The district supervisor will check the shipment with the consignee's monthly report and the storekeeper-gauger's report on Form 575, and will date and initial Part II and execute Part III of Form 597.

§ 187.267 *Investigation by district supervisor.* Where report of receipt of the specially denatured rum shipped is not received in due course, or where any material or unexplained difference exists between the quantity shipped and the quantity received, or where there is reasonable ground to suspect that the specially denatured rum has been or will be used for purposes other than those authorized by law and regulations, the district supervisor shall cause an investigation to be made.

§ 187.268 *Memorandum of receipt, Form 1453–A.* Proprietors of denaturing bonded warehouses will, when shipping specially denatured rum to the United States or any governmental ageney thereof, prepare one copy of Form 1453–A, properly modified, and forward it to the Government officer to whom the specially denatured rum is consigned. Upon receipt of the shipment, the Government officer will execute the certificate of receipt on the form and forward it to the district supervisor whose address appears at the bottom of the form.

§ 187.269 *Deliveries by bonded dealer.* A dealer in specially denatured rum shall make deliveries in accordance with the applicable provisions of this subpart.

SUBPART W—LOSSES

LOSSES IN DENATURATION

§ 187.280 *Determined monthly.* Losses occurring by evaporation or other unavoidable causes in the process of denaturation at a distillery denaturing bonded warehouse must be determined and reported monthly. The extent of the losses for each month shall be established by comparison of the quantity in proof gallons of rum used for denaturation with the quantity in proof gallons of denatured rum produced.

§ 187.281 *Losses allowable without claim.* Where the loss occurring in the process of denaturation during any calendar month does not exceed 1 percent of the quantity of rum used for denaturation during the month, claim for allowance of such loss will not be required, provided there are no circumstances indicating that the rum, or any part thereof, was used for purposes other than denaturation, or was unlawfully removed from the denaturing bonded warehouse. The allowance of 1 percent on account of losses in the process of denaturation will not be cumulative. Losses for each month must be determined separately.

§ 187.282 *Losses requiring claim.* Where the loss occurring in the process of denaturation is in excess of 1 percent, calculated in accordance with the provisions of § 187.281, claim under oath for allowance of the total losses during the month will be filed by the proprietor with the district supervisor, in accordance with the provisions of § 187.291.

§ 187.283 *Illegal diversion or removal.* The distilled spirits tax must be paid on all rum diverted to illegal uses on the premises of the denaturing bonded warehouse or in the course of transfer thereto, and on all rum removed from the denaturing bonded warehouse contrary to law, whether or not the total losses, including the rum diverted or unlawfully removed, exceed 1 percent of the aggregate quantity used for denaturation.

(53 Stat. 359; 26 U. S. C. 3111)

LOSSES OF RUM BY THEFT, UNAUTHORIZED VOLUNTARY DESTRUCTION, OR CASUALTY

§ 187.284 *Procedure applicable.* The procedure prescribed by Regulations 10 (26 CFR Part 185), relating to losses of rum by theft, unauthorized voluntary destruction, or casualty, shall apply to such losses in a distillery denaturing bonded warehouse.

LOSSES OF SPECIALLY DENATURED RUM AT DENATURING BONDED WAREHOUSE

§ 187.285 *Determined monthly.* The quantity of specially denatured rum lost at a denaturing bonded warehouse must be determined and reported monthly. The extent of the losses for each month shall be established by comparison of the quantity shown by actual inventory with the quantity carried in the storekeeper-gauger's report, Form 575, as remaining in storage at the end of the month. For the purpose of such comparison the gauge at the time of the filling of packages of specially denatured rum may be taken. The actual quantity in tanks must be ascertained.

§ 187.286 *Losses allowable without claim.* Where the loss of specially denatured rum does not exceed 1 percent of the aggregate quantity of specially denatured rum shipped from the denaturing bonded warehouse during any calendar month, claim for allowance of such loss will not be required, provided there are no circumstances indicating that the specially denatured rum, or any part thereof, was diverted to illegal use. The allowance of 1 percent on account of losses of specially denatured rum at a denaturing bonded warehouse will not be cumulative. Losses for each month must be determined separately by inventory of specially denatured rum on hand at the end of the month.

§ 187.287 *Losses requiring claim.* Where the loss of specially denatured rum exceeds 1 percent of the quantity shipped from the denaturing bonded warehouse during the month, claim under oath for allowance of the total losses during the month will be filed by the proprietor with the district supervisor in accordance with the provisions of § 187.291.

§ 187.288 *Illegal diversion or removal.* The distilled spirits tax must be paid on all specially denatured rum diverted to illegal uses, and on all such rum removed from the denaturing bonded warehouse contrary to law, whether or not the total losses of specially denatured rum at the denaturing bonded warehouse, including specially denatured rum diverted or unlawfully removed, exceed 1 percent of the aggregate quantity shipped from the denaturing bonded warehouse. No person shall sell denatured rum for use, or for sale for use, for beverage purposes; nor shall any person sell any denatured rum under circumstances from which it might reasonably appear that it is the intention of the purchaser to procure the same for sale or use for beverage purposes.

(53 Stat. 359; 26 U. S. C. 3111)

LOSSES OF SPECIALLY DENATURED RUM IN TRANSIT FOR EXPORT OR IN THE COURSE OF DELIVERY IN TRUCKS OWNED OR CONTROLLED BY PROPRIETOR

§ 187.289 *Losses allowable without claim.* Where the loss of specially denatured rum from any package or tank car in transit from the denaturing bonded warehouse for export, or in the course of delivery in trucks owned or controlled by the proprietor, does not exceed 1 percent of the quantity contained therein at the time of shipment, claim for allowance of such loss while in transit will not be required, provided there are no circumstances indicating that the specially denatured rum, or any part thereof, was diverted to illegal use.

§ 187.290 *Losses requiring claim.* Where the loss of specially denatured rum from any package or tank car in transit from the denaturing bonded warehouse for export or in the course of delivery in trucks owned or controlled by the proprietor exceeds 1 percent of the quantity contained therein at the time of shipment, claim under oath for allowance of the total quantity lost shall be filed with the district supervisor by the proprietor of the denaturing bonded warehouse. The claim will be prepared and filed in accordance with the provisions of § 187.291. Claims covering losses in transit of specially denatured rum shipped to manufacturers and dealers by railroad or steamship companies, or by express companies operating on railroad or steamship lines, or by trucking companies holding permit to transport specially denatured or tax-free alcohol, will be filed by such manufacturers and dealers in accordance with Regulations 3 (26 CFR part 182)

CLAIM FOR ALLOWANCE OF LOSSES

§ 187.291 *Form of claims.* No special forms have been provided for use by claimants in presenting claims for allowance of losses in the process of denaturation, or losses of specially denatured rum at a denaturing bonded warehouse or in transit for export or in the course of delivery in trucks owned or controlled by the proprietor. Such claims may be made on letter size paper, but must be in affidavit form, in duplicate, and the claimant must furnish the following information:

(a) The name of the proprietor and the registered number and location of the denaturing bonded warehouse;

(b) The serial numbers of the packages or other containers from which the specially denatured rum was lost;

(c) The quantity of specially denatured rum lost from each package or other container, and the total quantity of specially denatured rum covered by the claim;

(d) The date of the loss, or, if such date is not known, the date on which the loss was discovered, and the cause and nature thereof, together with all of the facts surrounding the loss;

(e) In the case of losses in the process of denaturation, (1) the quantity in proof gallons of rum used for denaturation during the month; (2) the quantity in proof gallons of denatured rum produced during the month; (3) whether the loss occurred as the result of any negligence, connivance, collusion, or fraud on the part of the proprietor or any of his agents; and (4) whether the proprietor is indemnified or recompensed in any manner for the loss. If the proprietor is indemnified or recompensed for the loss, the amount and nature of such indemnity or recompense must be shown;

(f) In the case of losses of specially denatured rum at a denaturing bonded warehouse, (1) the quantity shown by actual inventory to be on hand at the end of the month; (2) the quantity carried in the warehouse records as remaining on hand at the end of the month; (3) whether the loss occurred as the result of any negligence, connivance, collusion, or fraud on the part of the proprietor or any of his agents; and (4) whether the proprietor is indemnified or recompensed in any manner for the loss. If the proprietor is indemnified or recompensed for the loss, the amount and nature of such indemnity or recompense must be shown.

(g) In the case of losses of specially denatured rum in transit for export or in the course of delivery in trucks owned or controlled by the proprietor, (1) whether the loss occurred as a result of any negligence, collusion, or fraud on the part of the proprietor or any of his agents, and (2) whether he is indemnified or recompensed in any manner for the loss. If the proprietor is indemnified or recompensed for the loss, the amount and nature of such indemnity or recompense must be shown.

§ 187.292 *Supporting statements.* Claims for losses must be supported by affidavits of persons having personal knowledge of the loss.

§ 187.293 *Filing of claims.* The claims must be filed with the supervisor of the district in which the denaturing bonded warehouse is located. Claims for allowance of losses of specially denatured rum while in transit should be filed promptly.

§ 187.294 *Report of losses.* Losses of rum in process of denaturation or specially denatured rum by theft, accidental fire, or other casualty must be reported to the district supervisor by the proprietor of the denaturing bonded warehouse immediately after the losses are discovered. Where such losses are ascertained while an officer is on duty, the officer will immediately make a full report of the loss to the district supervisor. The officer's report should set out the nature, cause, and extent of the loss in sufficient detail to bring out all the material facts and circumstances surrounding the loss. The condition of each package or other container from which loss has been sustained and the quantity lost therefrom should be reported by the officer.

§ 187.295 *Investigation.* Where large losses from theft, casualty, or other cause are reported, the district supervisor will immediately make such investigation and require such evidence to be submitted as he may deem necessary, and will advise the Commissioner of his findings and recommendation relative to the allowance or disallowance of the loss.

§ 187.296 *Examination of claim.* When a claim for allowance of loss is received by the district supervisor, he will carefully examine same to see that all required information has been furnished and will cause such investigation to be made or require such additional evidence to be submitted as he may deem necessary. Upon completion of the investigation, if any, the district supervisor will forward one complete copy of the claim and accompanying papers, together with any pertinent reports and documentary evidence, to the Commissioner with his recommendation in respect to allowance or disallowance of the claim.

§ 187.297 *Records.* The storekeeper-gauger will enter all losses occurring at the denaturing bonded warehouse in his monthly record and report, Form 575. Where the loss is such as to require the filing of a claim, the storekeeper-gauger will attach to Form 575 a statement showing the nature, cause, and extent of the loss, or, if such information was previously furnished in the report submitted in accordance with § 187.294, a reference to such report will be noted on Form 575.

§ 187.298 *Failure to file claim.* Where loss has been sustained in such a quantity as to require the filing of a claim, and claim for allowance of the loss is not made as provided in §§ 187.291 to 187.293, the district supervisor will report the tax to the Commissioner for assessment, in accordance with prescribed assessment procedure.

Subpart X—Proprietor's Record and Report of Denaturants

§ 187.315 *Record 129.* The proprietor of every distillery denaturing bonded warehouse shall keep a monthly record on Record 129 of all denaturants received and used at such bonded warehouse or removed therefrom, of all samples of denaturants forwarded to the authorized chemist for analysis, and of the chemist's report of all analyses. Daily entries shall be made on Record 129 as indicated by the headings of the various columns and lines on the form and the instructions printed thereon or issued in respect thereto, and as required by this part, before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized by this section, appropriate memoranda shall be kept for the purpose of making the entries correctly. A monthly summary of the denaturants received and used or removed shall be made on such record at the end of the month. Record 129 shall be bound by the proprietor as a permanent record and kept available for inspection by Government officers.

(53 Stat. 373; 26 U. S. C. 3171)

§ 187.316 *Monthly report.* The proprietor shall render a monthly report on Record 129, in duplicate, to the district supervisor on or before the 5th day of the succeeding month. Record 129 must be sworn to before an officer authorized to administer oaths: *Provided,* That if the form officially prescribed for such report contains therein a provision for verification by a written declaration that such report is made under penalties of perjury, such report shall be verified by the execution of such declaration, and such declaration so executed shall be in lieu of the oath required herein for verification. The district supervisor will, after audit and not later than the last day of the month succeeding that for which the report is rendered, forward one copy of the report to the Commissioner and will retain the remaining copy.

(53 Stat. 373, 63 Stat. 667; 26 U. S. C. 3171, 3809)

Subpart Y—Storekeeper-Gauger's Record and Report

§ 187.325 *Form 575.* The storekeeper-gauger in charge of the distillery denaturing bonded warehouse shall keep a monthly record on Form 575 of all rum received and used for denaturation, all denaturants used, and all specially denatured rum produced, and withdrawn for shipment. Daily entries shall be made on Form 575 as indicated by the headings of the various columns and lines on the form, and the instructions printed thereon or issued in respect thereto, and as required by this part. A monthly summary of rum received and used, denaturants received and used, and denatured rum produced and disposed of, will be made on such form at the end of the month. Form 575 will be kept by the storekeeper-gauger in bound form as a permanent record, available for inspection by Government officers.

§ 187.326 *Monthly report.* The storekeeper-gauger shall render a monthly report on Form 575, in duplicate, to the district supervisor on or before the 5th day of the succeeding month. The district supervisor will, after audit and not later than the last day of the month succeeding that for which the report is rendered, forward one copy of the report to the Commissioner and will retain the remaining copy.

Subpart Z—Return of Specially Denatured Rum

§ 187.335 *Entry on Form 575.* Where specially denatured rum is for any reason returned to the denaturing bonded warehouse by a bonded dealer or manufacturer or by the carrier, as provided in Regulations 3 (26 CFR Part 182), the storekeeper-gauger will make a memorandum entry of the same in red ink on Part 1 of Form 575, but will not include the quantity thereof in the totals of the rum receipts recorded on such part. The total quantity of specially denatured rum returned during the month will, however, be entered on line 5 of the summary of Part 6, and when such denatured rum is again shipped entry thereof will be made in the same manner as other shipments.

Subpart AA—Operation Under a New Individual or Corporate Name, or Under Different Trade Names or Styles

§ 187.340 *Qualification required.* Whenever the proprietor of a denaturing bonded warehouse desires to change the individual or corporate name, or to operate under a trade name or style not previously approved, he must comply with § 187.95 and secure approval of such change in the manner prescribed in §§ 187.100 and 187.110, prior to the commencement of operations. Thereafter, whenever he desires to again operate under such approved trade name or style he must comply with § 187.95 and secure approval of the change in the manner prescribed in § 187.100, prior to commencement of operations thereunder.

§ 187.341 *Records.* Separate records on Record 129 will not be required for operations under a new individual or corporate name, or under each trade name or style, but the proprietor must note on each record the individual or corporate name or the trade names or styles under which operations were conducted during the month, and the dates of operation under each. The storekeeper-gauger will make similar notations on Form 575 whenever changes in the individual or corporate name or in trade names or styles occur.

(53 Stat. 373; 26 U. S. C. 3171)

Subpart BB—Change of Proprietorship

§ 187.350 *Completion of operations required.* When a succession or actual change in the proprietorship of a distillery denaturing bonded warehouse takes place other than a change brought about by operation of law, as by the appointment of an administrator, executor, assignee, receiver, trustee, or other fiduciary, the business of denaturing rum must be completely finished by the per-

son or persons who have been carrying on the business, and all specially denatured rum removed from the premises before the business shall be undertaken or begun by the succeeding proprietor, unless by agreement between the outgoing proprietor and the successor it shall be arranged to transfer from the former to the latter at the time the transfer of proprietorship becomes effective, all rum and specially denatured rum then on hand: *Provided*, That in each case the application and other qualifying documents of the successor, prescribed by Subpart H of this part, have been approved by the district supervisor, to take effect on the day next succeeding that at the close of which the transfer is made. Where a change of proprietorship has been brought about by operation of law, the administrator, executor, receiver, trustee, or other fiduciary may not commence or continue operations until the required qualifying documents have been filed and approved.

§ 187.351 *Records and reports.* Where there is a change in the proprietorship otherwise than by operation of law, the outgoing proprietor shall enter on his Record 129 all denaturants transferred to his successor, who shall in turn enter such items on his Record 129 as received from his predecessor. The storekeeper-gauger will likewise enter on Form 575 for the outgoing proprietor all rum and specially denatured rum transferred to the successor, and will take up on the Form 575 for the successor all such rum and specially denatured rum received from his predecessor. Where an administrator, executor, assignee, receiver, trustee, or other fiduciary succeeds to the business and qualifies to operate the same, he shall make proper notation on Record 129 of his succession, and the storekeeper-gauger will likewise make note of such succession on Form 575.

SUBPART CC—SAFEGUARDING OF GOVERNMENT PROPERTY

§ 187.360 *Storage in Government cabinet.* The keys to Government locks, and the seals and other Government property at a denaturing bonded warehouse, when not in use, will be kept in the Government cabinet under Government seal lock. The storekeeper-gauger must not leave the cabinet open except in his immediate presence, nor give the key thereof to anyone except another Government officer authorized to receive it. Where it is necessary to open the cabinet at various times during the day the lock will not be seal-closed until the close of business.

SUBPART DD—LOCKS AND SEALS

§ 187.365 *General.* The provisions of Regulations 4 (26 CFR Part 183), relative to locks and seals, are hereby extended, insofar as applicable, to denaturing bonded warehouses.

§ 187.366 *Where locks are required.* District supervisors will bear in mind that Government locks are required on the doors of the denaturing bonded warehouse and the denaturing material storeroom therein; on the door of the Government cabinet; on all manheads, inlets, outlets, and other openings of rum storage tanks, weighing tanks, denaturing material storage tanks, and denatured rum tanks; on the valves in pipelines used for the conveyance of rum and denatured rum; and on such other parts of the premises or equipment as are required by this part or deemed necessary by the district supervisor.

§ 187.367 *Seal locks.* Seal locks will be used on the entrance doors of the denaturing bonded warehouse and the denaturing material storeroom; on denaturing material tanks, if not located in the denaturing material storeroom; on the door of the Government cabinet; and on such other places where the use of seal locks is required by this part or deemed necessary by the district supervisor.

3. The purposes of the proposed regulations are as follows:

a. To conform to the act of February 21, 1950 (Public Law 448, 81st Cong.), effective September 1, 1950.

b. To delegate to district supervisors the authority to approve the establishment of distillery denaturing bonded warehouses.

c. To incorporate regulations applicable to the gauging of rum at distillery denaturing bonded warehouses now contained in the Gauging Manual (26 CFR Part 186), but which are being deleted from the current revision of such manual.

d. To discontinue Form 1489 as a district supervisor's monthly account of distillery denaturing bonded warehouses.

e. To prescribe, in lieu of an oath, a declaration subject to the penalties of perjury, for certain forms:

Form 129, "Report of Denaturants."
Form 571, "Application by Proprietor of Distillery Denaturing Bonded Warehouse."
Form 1545, "Application for Permit to Export Specially Denatured Alcohol."

f. To rearrange the text to conform to the Federal Register Regulations (13 F. R. 5929).

Effective date. These regulations shall be effective as of September 1, 1950.

[SEAL] GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved: July 31, 1950.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

[F. R. Doc. 50-6844; Filed, Aug. 3, 1950; 8:50 a. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 204—DANGER ZONE REGULATIONS

MISCELLANEOUS AMENDMENTS

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (33 U. S. C. 1), and chapter XIX of the Army Appropriation Act of July 9, 1918 (33 U. S. C. 3), § 204.10 (c) is hereby revoked, §§ 204.180 and 204.225 are hereby amended, and §§ 204.81 and 204.221 are hereby prescribed, as follows:

§ 204.10 *Narragansett Bay and adjacent waters, R. I.; danger zones for naval operations.* * * *

(c) *Prohibited area in vicinity of Ohio Ledge.* [Revoked.]

* * * * * *

§ 204.81 *Atlantic Ocean off Georgia coast; aerial gunnery and bombing range, Air National Guard*—(a) *The danger zone.* An area approximately 25 miles offshore between a line two miles north of St. Catherines Sound and a line three miles south of Altamaha Sound, described as follows: Beginning at latitude 31°45'00, longitude 80°33'00"; thence 90° true to longitude 80°17'30"; thence southerly to latitude 31°15'00", longitude 80°20'30"; thence 270° true to longitude 80°51'00"; and thence northeasterly to the point of beginning.

(b) *The regulations.* (1) All aerial gunnery and bombing practice in the danger zone will be conducted during daylight hours and usually on Saturdays and Sundays. The danger zone shall be open to navigation except when aerial gunnery or bombing practice is being conducted.

(2) Prior to conducting each practice the danger zone will be patrolled by aircraft, which will warn navigation to leave the area by "buzzing," i. e., by flying low over the watercraft. Any watercraft shall, upon being so warned, immediately leave the area designated and shall remain outside the area until practice has ceased.

(3) The regulations in this section shall be enforced by the Commanding Officer, 158 Fighter Squadron, Georgia Air National Guard, Hunter Field, Savannah, Georgia, and such agencies as he may designate.

§ 204.180 *Waters of Lake Michigan south of Northerly Island at entrance to Burnham Park Yacht Harbor, Chicago, Illinois; danger zone adjacent to airport on Northerly Island*—(a) *Danger zone*—(1) *Zone A.* * * * During the navigation season, the southeast and southwest corners of Zone A will be marked with spar buoys colored and lettered as prescribed by the United States Coast Guard.

(2) *Zone B.* * * * During the navigation season, the southeast and southwest corners of Zone B will be marked with spar buoys colored and lettered as prescribed by the United States Coast Guard.

(b) *Regulations.* * * *

(3) The regulations in this section shall be enforced by the Commander, Ninth Coast Guard District, Cleveland, Ohio, and such agencies as he may designate.

§ 204.221 *Strait of Juan de Fuca, Wash.; naval operations area for nonexplosive air-to-surface target practice*—(a) *The danger zone.* (1) Beginning at a point at latitude 48°16'30", longitude 123°03'00"; thence east to latitude 48°16'30", longitude 122°55'00"; thence northwesterly to latitude 48°21'00", longitude 122°57'00"; thence to latitude 48°21'00", longitude 123°05'00"; thence southwesterly to the point of beginning.

(2) The area will be used for air to surface target practice using non-explosive projectiles.

(3) All runs will be made under weather conditions which will insure that the pilot can determine from the air that the area is clear, and firing will be in a direction from any vessels near the area in order to eliminate all possibility of danger to property or life.

(4) No firing shall take place until the area is clear of all watercraft except those taking part in the practice.

(b) *The regulations.* (1) Between 8:00 a. m., and 4:00 p. m., Pacific standard time, no vessel or other craft shall enter or remain within the designated area except as authorized by the enforcing agency.

(2) Prior to the conducting of each practice the area will be patrolled by Naval vessels flying a "Baker" (red) flag, and unauthorized vessels found therein will be contacted and warned to immediately leave the area.

(3) Upon application, the Navy will grant special permission to others to pass through or otherwise use the area if no interference to the Navy's use of the area is evident.

(4) The regulations in this section shall be enforced by the Commandant of the Thirteenth Naval District or his authorized representative.

§ 204.225 *Mona Passage in vicinity of Monito and Desecheo Islands, Puerto Rico; aerial bombing and gunnery ranges, United States Air Force, Ramey Air Force Base, Puerto Rico*—(a) *The danger zones*—(1) *Monito Island area.* All waters within a circle ten miles in diameter with its center at latitude 18°09'42.5", longitude 67°57'00", the approximate center of Monito Island.

(2) *Desecheo Island area.* All waters within a circle ten miles in diameter with its center at latitude 18°23'15", longitude 67°28'50", the approximate center of Desecheo Island.

(3) The outer boundaries of the danger zones will not be marked, but signs will be posted at conspicuous places on the shores of Monito and Desecheo Islands to warn against trespassing on the target areas. Aircraft and watercraft will be presumed to know the location of the danger zones by their principal landmarks, Monito Island at the center and Mona Island on the southeast edge of one area, and Desecheo Island at the center of the other area.

(b) *The regulations.* (1) The danger zones shall be open to navigation at all times except when aerial bombing and gunnery practice is being conducted. At such times no vessel or other craft shall enter or remain within the areas except with the specific permission of the enforcing agency.

(2) The fact that bombing or gunnery practice is to take place over the designated areas will be advertised to the public through the usual media for the dissemination of such information. Inasmuch as such practice is to be carried on throughout the year, without regard to season, such advertising will be repeated at intervals not exceeding three months, and at more frequent intervals when, in the opinion of the enforcing agency, such frequent repetition is advisable in the interests of public safety.

(3) Prior to conducting each bombing or gunnery practice the entire areas will be patrolled to insure that no watercraft are within the danger zone. Any watercraft found in the vicinity will be warned that such practice is about to take place. Any such watercraft shall, upon being so warned, leave the danger zone immediately and shall not return until such practice shall have been terminated.

(4) This section shall be enforced by the Commanding Officer, 5900th Composite Wing, United States Air Force, Ramey Air Force Base, Puerto Rico, and such agencies as he may designate.

[Regs. July 6, 1950, 800.2121—ENGWO] (Sec. 4, 28 Stat. 362, as amended; 33 U. S. C. 1. Interpret or apply 40 Stat. 892; 33 U. S. C. 3)

[SEAL] EDWARD F. WITSELL,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 50-6818; Filed, Aug. 3, 1950; 8:46 a. m.]

PART 208—FLOOD CONTROL REGULATIONS

MEDICINE CREEK DAM AND RESERVOIR, MEDICINE CREEK, FRONTIER COUNTY, NEBR.

Pursuant to the applicable provisions of section 7 and 9 of the act of Congress approved December 22, 1944 (58 Stat. 890, 891; 33 U. S. C. 709), the following regulations are hereby prescribed to govern the use of storage capacity for flood-control purposes in the Medicine Creek Reservoir on Medicine Creek, Frontier County, Nebraska, and the operation of Medicine Creek Dam for flood-control purposes.

§ 208.35 *Medicine Creek Dam and Reservoir, Medicine Creek, Frontier County, Nebraska.* The Bureau of Reclamation, Department of the Interior, represented by its appropriate District Manager, hereinafter referred to as the District Manager, shall operate the Medicine Creek Dam and Reservoir in the interest of flood control as follows:

(a) The flood-control storage capacity of the reservoir, which initially amounts to 52,000 acre-feet between elevations 2366.1 and 2386.2, will be operated to restrict discharges to the capacity of the ungated flood-control notch except as necessary for irrigation requirements, unless otherwise directed by the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, hereinafter referred to as the District Engineer. Whenever necessary in the interests of flood control, the District Engineer will furnish instructions to the District Manager as to operation of the flood control storage through the outlet works (having a capacity of approximately 400 c. f. s. with water surface in the flood-control pool) to coordinate the operation of the Reservoir with other reservoirs in the Republican and Missouri River Basins. Oral instructions of the District Engineer to the District Manager shall be confirmed in writing under date of the day issued.

(b) The discharge characteristics of the ungated flood-control notch incorporated into the spillway structure (having an estimated capacity of 4,000 c. f. s. with reservoir level at elevation 2386.2) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. 2023 as modified by Drawing 328-D-587, Revision dated 8-5-49).

(c) Proposed schedules of irrigation releases and storage changes, if available, and current operating data shall be provided to the District Engineer by the District Manager. These data shall be tabulated daily and furnished periodically as required, and shall include such items as: reservoir elevation, reservoir storage, inflow, discharge, and pertinent available hydrologic data.

(d) Whenever the reservoir level reaches or exceeds elevation 2366.1, or flood discharges appear imminent, the District Manager shall report at once to the District Engineer by telephone, telegraph or radio and, as requested thereafter until the reservoir level falls to elevation 2366.1 or below and flood discharges cease.

(e) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with requirements for protecting the dam and reservoir from major damage.

(f) All elevations stated in this section are at the Medicine Creek Dam and are referred to the datum in use at that location.

[Regs. July 14, 1950, ENGWE] (58 Stat. 890, 891; 33 U. S. C. 709)

[SEAL] EDWARD F. WITSELL,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 50-6817; Filed, Aug. 3, 1950; 8:46 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders

[Public Land Order 654]

ALASKA

EXCLUDING CERTAIN AREAS EMBRACED IN UNITED STATES SURVEYS FROM THE TONGASS NATIONAL FOREST AND RESTORING THEM FOR PURCHASE AS HOMESITES OR FOR CLASSIFICATION UNDER THE SMALL TRACT ACT

By virtue of the authority vested in the President by the act of June 4, 1897, 30 Stat. 11, 36 (16 U. S. C. 473), and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Those lands within United States Surveys Nos. 2402, 2403 and 2801, plats of which are on file in the Bureau of Land Management, Department of the Interior, Washington, D. C., which have not heretofore been excluded from the Tongass National Forest, are hereby excluded from that forest and restored, subject to valid existing rights, for purchase as homesites under section 10 of the act of May 14, 1898, as amended by

the act of May 26, 1934, 48 Stat. 809 (48 U. S. C. 461), or for classification under the Small Tract Act of June 1, 1938, 52 Stat. 609, as amended by the act of July 14, 1945, 59 Stat. 467 (43 U. S. C. 682a), except that all rights-of-way within the surveys and lot 90 of U. S. Survey No. 2403 shall not be affected by this order but shall remain national-forest land.

The amount of land within each survey restored by this order is as follows:

Within U. S. Survey No. 2402: 78.33 acres.
Within U. S. Survey No. 2403: 3.47 acres.
Within U. S. Survey No 2801: 17.69 acres.

Those lands not occupied under Forest Service permits shall not become subject to the initiation of any rights or to any disposition under the public-land laws until provision is made therefor by an order of classification issued by the Regional Administrator, Bureau of Land Management, Department of the Interior, Anchorage, Alaska, opening the lands to application under the said Small Tract Act, as amended, with a ninety-day preference-right period for the filing of such applications by veterans of World War II and other qualified persons entitled to preference under section 4 of the act of September 27, 1944, 58 Stat. 748 as amended by section 3 of the act of May 31, 1947, 61 Stat. 124 (43 U. S. C. 282).

OSCAR L. CHAPMAN,
Secretary of the Interior.

JULY 28, 1950.

[F. R. Doc. 50-6816; Filed, Aug. 3, 1950; 8:46 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 9650]

PART 3—RADIO BROADCAST SERVICES

RESERVATION OF NON-COMMERCIAL EDUCATIONAL FM BROADCAST CHANNEL FOR UNITED NATIONS

At a session of the Federal Communications Commission held in its offices in Washington, D. C., on the 26th day of July 1950;

The Commission having under consideration a proposal to amend § 3.501 of Subpart C (Rules Governing Non-Commercial Educational FM Broadcast Stations) of Part 3 (Radio Broadcast Services) of the Commission's rules in order to reserve frequency 89.1 Mc., Channel No. 206 in the New York City metropolitan area for the use of the United Nations;

It appearing, that notice of proposed rule making setting forth the above amendment was issued by the Commission on May 15, 1950, and was duly published in the FEDERAL REGISTER, which notice provided that interested parties might file statements or briefs with respect to the said amendment on or before June 19, 1950; and

It further appearing, That the time for filing comments has passed and that no comments have been submitted with respect to the proposed amendment; and

It further appearing, That authority for this action is contained in section 4 of 61 Stat. 759, and in sections 4 (i), 303 (c) and 303 (r) of the Communications Act, as amended;

It is ordered, That effective September 5, 1950, the following footnote be added to § 3.501 of Subpart C of Part 3 of the Commission's rules:

[1] The frequency 89.1 Mc., Channel No. 206 in the New York City metropolitan area is reserved for the use of the United Nations with the equivalent of an antenna height of 500 feet above average terrain and effective radiated power of 20 kw., and the Commission will make no assignments which would cause objectionable interference with such use.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154)

Released: July 26, 1950.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6828; Filed, Aug. 3, 1950; 8:48 a. m.]

PART 12—AMATEUR RADIO SERVICE

USE OF NARROW BAND FREQUENCY OR PHASE MODULATION EMISSION

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 26th day of July 1950;

The Commission having under consideration the matter of amending § 12.114 (b) of the rules governing Amateur Radio Service for the purpose of continuing beyond August 1, 1950, the present temporary authority for amateurs to use narrow band frequency or phase modulation emission for radiotelephone communication in the bands 3850 to 3900 kc.; 14200 to 14250 kc.; 28.5 to 29.0 Mc. and 51.0 to 52.5 Mc.; and

It appearing that, by order dated April 20, 1949, the Commission has heretofore promulgated a notice of proposed rule making (Docket 9295) which proposes, among other matters, to grant authority on a permanent basis for the use of such narrow band techniques for radiotelephone communication in the amateur frequency bands specified herein; and

It further appearing that, it is desirable that there be no interruption in this type of operation after July 31, 1950, the date when the present temporary authority for this type of operation expires, pending action on the above-mentioned notice of proposed rule making; that it is, therefore, desirable that § 12.114 (b) be amended effective not later than August 1, 1950, in order to extend beyond that date the authority for this type of operation, and, therefore, that the public notice and procedure provided for in section 4 of the Administrative Procedure Act are impracticable and unnecessary; and for the same reasons and also because the extension of the mentioned authority will continue to relieve a restriction which would otherwise exist, such extension should be made effective not later than August 1, 1950; and

It further appearing that, authority to adopt the amendment in question is contained in sections 303 (b), (e), (f), (g), and (r) of the Communications Act of 1934, as amended;

It is ordered, That, effective August 1, 1950, § 12.114 (b) of the rules governing Amateur Radio Service is amended by changing the date "July 31, 1950" which appears therein to read "July 31, 1951".

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303)

Released: July 26, 1950.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6829; Filed, Aug. 3, 1950; 8:48 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[1234286]

FLORIDA

NOTICE OF FILING OF PLAT OF SURVEY

JULY 28, 1950.

Notice is given that the plat of extension survey of the following described lands, accepted October 5, 1949, will be officially filed in this Bureau effective at 10:00 a. m. on the 35th day after the date of this notice:

DUVAL COUNTY

TALLAHASSEE MERIDIAN

T. 1 S., R. 28 E.,
Sec. 19, lot 1,
Sec. 20, lot 1,
Sec. 29, lot 8,
Sec. 30, lot 1.

The area described aggregates 669.91 acres.

Available data indicates that the above described lands are low level salt marsh having elevations of from 0.3 to 1.5 feet above mean high tide.

Upon the official filing of this plat the lands shown thereon will become subject to disposition under the general public land laws; however, it appears from the plat and field notes of the survey that the lands described therein are swamp and overflowed within the meaning of the act of September 28, 1850 (9 Stat. 519). Therefore, if upon a selection by the State of Florida, it should be finally determined that the lands are swamp and overflowed in character, they must be held to be subject to the claim by the State under the preference

right provided for by the act of September 28, 1850 (9 Stat. 519).

This order shall not become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date of this order. At that time the said lands shall become subject to application, petition, location and selection, subject to valid existing rights, the provisions of existing withdrawals, the requirements of applicable law, and the 90 day preference right filing period for veterans and others entitled to preference under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284), as amended.

Information showing the periods during which and the conditions under which veterans and others may file applications for these lands may be obtained on request from the Director, Bureau of Land Management, Washington 25, D. C.

MARION CLAWSON,
Director.

[F. R. Doc. 50-6815; Filed, Aug. 3, 1950; 8:46 a. m.

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 8380]

OZARKS BROADCASTING CO. (KWTO)

ORDER CONTINUING ORAL ARGUMENT

In re application of Ozarks Broadcasting Company (KWTO), Springfield, Missouri, for construction permit; Docket No. 8380, File No. BP-5259.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of July 1950;

The Commission having under consideration a letter dated July 26, 1950, from counsel for Aladdin Radio and Television, Inc. (KLZ), Denver, Colorado, respondent in the above-entitled proceeding, requesting that oral argument in this proceeding, now scheduled for July 28, 1950, be continued to the next date upon which the Commission hears oral arguments in broadcast proceedings; and

It appearing, that in support of said request counsel for KLZ states that a situation has arisen which makes it of utmost importance that he be absent from Washington, D. C., on July 27 and 28, 1950; that counsel for the applicant and the other parties to this proceeding have stated that they have no objection to the postponement requested; and that under the circumstances said request should be granted and said oral argument should be continued without date;

Accordingly, it is ordered, That the above-described request of Aladdin Radio and Television, Inc. (KLZ) is granted; and that oral argument in the above-entitled proceeding, now scheduled for July 28, 1950, is continued without date.

Released: July 27, 1950.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6842; Filed, Aug. 3, 1950; 8:49 a. m.]

[Docket No. 9422]

KAVR, INC. (KAVR)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of KAVR, Inc. (KAVR), Havre, Montana, for construction permit; Docket No. 9422, File No. BP-7254.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 26th day of July 1950;

The Commission having under consideration the above-entitled application requesting a construction permit to change the facilities of Station KAVR, Havre, Montana, from 1240 kc., 250 w., U. to 910 kc., 1 kw.-5 kw.-LS, DA-2 U.; and

It appearing, that the applicant is legally, technically, financially and otherwise qualified to operate Station KAVR, as proposed, but that the application may involve interference with one or more existing stations and otherwise not comply with the Standards of Good Engineering Practice;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing at Washington, D. C., at 10:00 a. m., on the 9th day of January 1951, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of Station KAVR, as proposed, and the character of other broadcast service available to those areas and populations.

2. To determine whether the operation of Station KAVR, as proposed, would involve objectionable interference with Station KCJB, Minot, North Dakota, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the installation and operation of Station KAVR, as proposed, would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations with particular reference to the areas and populations which will receive satisfactory service, the percentage of population residing within the 250 mv/m blanket contour and the possibility of cross-modulation and re-radiation problems with Station KOJM, Havre, Montana, as presently operating or as proposed in the application File No. BP-7134.

It is further ordered, That the North Dakota Broadcasting Company, Inc., permittee of Station KCJB, Minot, North Dakota, is made a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6841; Filed, Aug. 3, 1950; 8:49 a. m.]

[Docket Nos. 9479, 9667, 9740]

RALPH D. EPPERSON (WPAQ) ET AL.

ORDER DESIGNATING APPLICATION FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Ralph D. Epperson (WPAQ, Mount Airy, North Carolina, Docket No. 9479, File No. BP-7153; News Journal Corporation (WNDB), Daytona Beach, Florida, Docket No. 9667, File No. BP-6983; The Fort Industry Company (WAGA), Atlanta, Georgia, Docket No. 9740, File No. BP-7593; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 21st day of July 1950;

The Commission having under consideration the above-entitled application of The Fort Industry Company for a construction permit to change frequency from 590 kc to 550 kc and to change antenna system and transmitter location at Station WAGA, Atlanta, Georgia;

It appearing, that, on May 12, 1950, the Commission designated for hearing in a consolidated proceeding the above-entitled applications of Ralph D. Epperson (WPAQ) and the News Journal Corporation (WNDB); the said hearing was originally scheduled for June 26, 1950, but by Order of the Hearing Examiner on June 16, 1950, the said hearing was continued for 60 days and is presently scheduled for August 28, 1950, at 10:00 a. m. in Washington, D. C.;

It further appearing, that the above-entitled application of The Fort Industry Company (WAGA) may involve objectionable interference to each of the other two above-entitled applications and otherwise may not comply with the Standards of Good Engineering Practice;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the above-entitled application of The Fort Industry Company is designated for hearing in a consolidated proceeding with the above-entitled applications of Ralph D. Epperson and News Journal Corporation, commencing at 10:00 a. m. on August 28, 1950, at Washington, D. C., upon the following issues:

1. To determine the technical, financial and other qualifications of the corporate applicant, its officers, directors and stockholders to operate Station WAGA, as proposed.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station, and the character of other broadcast service available to such areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of Station WAGA, as proposed, would involve objectionable interference with any other existing broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of

other broadcast service to such areas and populations.

5. To determine whether the operation of Station WAGA, as proposed, would involve objectionable interference with the services proposed in the pending applications of Ralph D. Epperson (WPAQ) and News Journal Corporation (WNDB), or with the services proposed in any other pending applications for broadcast facilities, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the operation of Station WAGA, as proposed, would involve objectionable interference with Station CMW, Havana, Cuba, or with any other existing foreign broadcast station and, if so, the nature and extent of such interference.

7. To determine whether the installation and operation of Station WAGA, as proposed, would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

8. To determine on a comparative basis which, if any, of the applications in this consolidated proceeding should be granted, or whether all of the applications should be granted.

It is further ordered, That the Commission's order of May 12, 1950, designating for hearing in a consolidated proceeding the above-entitled applications of Ralph D. Epperson (WPAQ) and News Journal Corporation (WNDB) is amended to include the application of The Fort Industry Company (WAGA), and the issues specified herein.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6835; Filed, Aug. 3, 1950; 8:49 a. m.]

[Docket No. 9596]

PLATTE VALLEY BROADCASTING CORP. (KNEB)

MEMORANDUM OPINION AND ORDER AMENDING ISSUES

In re application of Platte Valley Broadcasting Corporation (KNEB), Scottsbluff, Nebraska, for construction permit; Docket No. 9596, File No. BP-7035.

The Commission has before it a petition for modification or clarification of issues filed on May 19, 1950, by May Broadcasting Company, licensee of Station KMA, Shenandoah, Iowa, and opposition thereto filed on May 29, 1950, by Platte Valley Broadcasting Corporation.

The above-entitled application of Platte Valley Broadcasting Corporation for a construction permit to change the facilities of Station KNEB, Scottsbluff, Nebraska, from frequency 970 kilocycles, 1 kilowatt power, daytime only to frequency 960 kilocycles, 500 watts, 1 kilowatt-LS power, unlimited time and to install a directional antenna (DA-2) was designated for hearing by Commission Order of March 6, 1950. By this same order, the petition of May Broadcasting Company requesting that the said application be designated for hearing and that petitioner be made a party to the proceeding and be afforded an opportunity to furnish program data was granted.

The petition of May Broadcasting Company was based on that section of the Standards of Good Engineering Practice which provides that "when it is shown that primary service is rendered by" a station "beyond the normally protected contour, and when primary service to approximately 90 percent of the population (population served with adequate signal) of the area between the normally protected contour and the contour to which such station actually serves, is not supplied by any other station or stations carrying the same general program service, the contour to which protection may be afforded in such cases will be determined from the individual merits of the case under consideration." The petition and supporting engineering affidavit alleged that Station KMA renders primary nighttime service beyond its normally protected 2.5 mv/m contour and that the area between the normally protected contour and the contour to which it actually serves is not served by any other station carrying the same general program service.

As a result of the said petition, the order of March 6, 1950, granting the petition and designating the application of Platte Valley Broadcasting Company for hearing, contained, among others, the following issue:

To determine whether Station KMA, Shenandoah, Iowa, renders primary service to ninety percent of the population of the area between its normally protected contour and the contour to which it actually serves and, if so, to determine in what respects and to what extent, if any, the general program service supplied differs from the general program service of other stations serving this area.

The instant petition requests that this issue be modified to read as follows:

To determine whether Station KMA, Shenandoah, Iowa, renders primary service to 90 percent of the population of the area between its normally protected contour and the contour to which it actually serves in those sectors where interference could result from a grant of the KNEB application and if so, to determine in what respects and to what extent, if any, the general program service supplied by KMA differs from the general program service of other stations serving these interference areas.

As reason for requesting the clarification of the above stated issue, petitioner states the issue as presently worded could be construed as requiring KMA to show what program service it provides between its 1.76 and 2.5 mv/m contours to the east, to the west, to the north, and to the south, and what other signals and program services are available throughout that "donut shaped" area. It is also stated that "it seems obvious that the Commission's interest in this proceeding vis-à-vis KMA-KNEB is in determining where the interference falls, the extent of the interference, signals available to 90 percent or more of the population in those areas and the program service provided by KMA and other stations in those interference areas." As support for this belief petitioner sets forth the situation that where a station like KMA serves a large area, it not infrequently happens that the granting of a new application would cause a crescent or other shaped area of interference in one sector only in the existing station's interference-free primary service area. If that interference fell in an area where no other primary signal was available, thus creating a "white area" where none presently existed, the "public interest" considerations would be far different than if the interference fell in some other sector where several stations provided "the same general program service."

In its opposition to the instant petition, applicant contends that the petition is dilatory in nature and that the Commission has not heretofore been interested in aiding counsel's interpretation of any particular rule or regulation or of any paragraph of the Standards of Good Engineering Practice. Applicant further contends that the instant request is for modification of that paragraph of the Standards on which the intervention of May Broadcasting Company is based as issue 4 of the order of designation is a paraphrase of the paragraph in question. It is contended that the language of this paragraph is unequivocal and unambiguous.

With reference to applicant's contention that the instant pleading is dilatory, the pleading was timely filed under the Commission's rules and presents a valid question as to the interpretation to be given to the issue in question. With regard to applicant's contention of lack of interest on the part of the Commission in this matter, a resolution of the conflicting interpretations of this issue is necessary to permit an orderly proceeding on the application of Platte Valley Broadcasting Corporation.

Applicant's contention that the instant petition is in effect a request for modification of the Standards of Good Engineering Practice is not well taken. The pertinent section of the Standards states "the contour to which protection may be afforded in such cases will be determined from the individual merits of the case under consideration." The case under consideration in this proceeding is the application of Platte Valley Broadcasting Corporation and one of the matters to be determined is the contour to which protection may be afforded to Station KMA from the proposed operation of Station KNEB. The object of this proceeding is not to determine the protection which may be afforded Station KMA around the entire periphery of its service area. The Commission is of the opinion that such is not the intent of the section of the Standards in question and that such an interpretation would be unreasonable.

Issue 4 in this proceeding shifts the burden of proof with reference to interference claimed outside the normally protected contour from the applicant to

the party intervenor and compels a specific showing by the intervenor of the general program service provided by all stations serving such area or areas. The Standards raise no presumption that primary service is rendered beyond normally protected contours. The burden of proving such service is rendered, is on the party claiming protection within the areas involved. Further, the party claiming protection within these areas has the burden of showing that less than approximately 90 percent of the population it serves outside its normally protected contour, but within the interference areas involved, does not receive the same general program service from any other station or stations.

If Station KMA is the only station providing a particular type of program service within such areas of interference, if any, such fact would be pertinent in making a determination of whether public interest, convenience, or necessity would be best served by a grant or by a denial of the application for increase in facilities of Station KNEB and in resolving whether or not a grant would tend to provide a fair, efficient and equitable distribution of radio service among the several States and communities as required under sections 307 (a) and 307 (b) of the Communications Act.[1] A showing of other services available within those sectors not involving interference from the proposed operation would not be pertinent to making such a determination.

Accordingly, it is ordered, This 26th day of July 1950, that the said petition for modification or clarification of issues is granted and the Commission's Order of March 6, 1950, designating the application of Platte Valley Broadcasting Corporation for hearing is amended to delete Issue 4 therefrom and to include as Issue 4 therein the following issue:

4. To determine whether Station KMA, Shenandoah, Iowa, renders primary service beyond its normally protected contour in any area or areas within which the operation of Station KNEB as proposed may involve interference and, if so, whether 90 percent of the population (population served with an adequate signal) in those areas are supplied with primary service by any other station or stations which carry the same general program service as station KMA.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6840; Filed, Aug. 3, 1950; 8:49 a. m.]

[1] Section 307 (a) provides: "The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this act, shall grant to any applicant therefor a station license provided for by this act."

Section 307 (b) provides: "In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."

[Docket No. 9654]

SEVIER VALLEY BROADCASTING CO. (KSVC)

ORDER CONTINUING HEARING

In re application of Sevier Valley Broadcasting Company (KSVC), Richfield, Utah, for renewal of license; Docket No. 9654, File No. BR-2232.

The Commission having under consideration a petition filed July 24, 1950, by Sevier Valley Broadcasting Company, licensee of Radio Station KSVC at Richfield, Utah, requesting that the hearing in the above-entitled proceeding be continued for a period of 60 days from the presently scheduled date of August 7, 1950;

It appearing, that there are no other parties to the proceeding; that Commission Counsel has indicated that he has no objection to the requested continuance; that compliance with § 1.745 of the Commission's rules is therefore unnecessary; and that good and sufficient cause has been shown in the petition for said continuance;

It is ordered, This 25th day of July, 1950, that the petition be, and it is hereby, granted; and the hearing in the above-entitled matter be, and it is hereby, continued to 10:00 a. m. Monday, October 9, 1950, in Richfield, Utah.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6843; Filed, Aug. 3, 1950; 8:50 a. m.]

[Docket No. 9669]

CLATSOP VIDEO BROADCASTERS (KVAS) ET AL

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Leroy E. Parsons and Richard F. Denbo, d/b as Clatsop Video Broadcasters (KVAS), Astoria, Oregon, for modification of construction permit; Docket No. 9669, File No. BMP-5086.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 21st day of July 1950;

The Commission having under consideration the above-entitled application of Leroy E. Parsons and Richard F. Denbo, d/b as Clatsop Video Broadcasters, requesting a modification of construction permit to change frequency from 1050 kc. to 1240 kc. and operate unlimited time with 250 w. power at Station KVAS, Astoria, Oregon;

It appearing, that the applicant is legally, technically, financially and otherwise qualified to operate Station KVAS as proposed, but that the application may involve interference with one or more existing stations;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing commencing at 10:00 a. m. on January 5, 1951, at Washington, D. C., upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station, and the character of other broadcast service available to such areas and populations.

2. To determine whether the operation of Station KVAS as proposed would involve objectionable interference with Station KGY, Olympia, Washington, or with any other existing broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

It is further ordered, That Tom Olsen, licensee of Station KGY, Olympia, Washington, is made a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6832; Filed, Aug. 3, 1950; 8:48 a. m.]

[Docket No. 9736]

CECIL W. ROBERTS

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Cecil W. Roberts, Kewanee, Illinois, for construction permit; Docket No. 9736, File No. BP-7647.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 21st day of July 1950;

The Commission having under consideration (1) the above-entitled application for a permit to construct a new standard broadcast station to operate on 960 kilocycles, with 250 watts power, daytime only at Kewanee, Illinois; and (2) a petition, filed June 2, 1950, by the May Broadcasting Company, licensee of Station KMA, Shenandoah, Iowa, alleging that the above-entitled application would involve objectionable interference to Station KMA, and requesting that the subject application be designated for hearing and that the petitioner be made a party to the proceeding;

It appearing, that the applicant is legally, technically, financially and otherwise qualified to operate the proposed station, but that the application may involve interference with one or more existing stations and otherwise not comply with the Standards of Good Engineering Practice; particularly with reference to operation of a Class IV station on a Class III channel.

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing commencing at 10:00 a. m. on December 18, 1950, at Washington, D. C., upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station, and the character of other broadcast service available to such areas and populations.

2. To determine whether the operation of the proposed station would involve objectionable interference with Station KMA, Shenandoah, Iowa, and with Station WSBT, South Bend, Indiana, or with any other existing broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations, with particular reference to failure to meet the minimum requirements for the establishment of a Class IV station on a Regional Channel.

It is further ordered, That the petition of the May Broadcasting Company (KMA) requesting that the above-entitled application be designated for hearing and that the petitioner be made a party to the proceeding, is granted.

It is further ordered, That the May Broadcasting Company, licensee of Station KMA, Shenandoah, Iowa; and that the South Bend Tribune, licensee of Station WSBT, South Bend, Indiana, are made parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6830; Filed, Aug. 3, 1950; 8:48 a. m.]

[Docket No. 9737]

BLAKE BROADCASTING CO. ET AL.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Robert Blake and John Blake d/b as Blake Broadcasting Company, Memphis, Texas, for construction permit; Docket No. 9737, File No. BP-7648.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 21st day of July 1950;

The Commission having under consideration the above-entitled application for a permit to construct a new standard broadcast station to operate on the frequency of 1370 kilocycles, with 250 watts power daytime only, at Memphis, Texas;

It appearing, that the applicant is legally, technically, financially and otherwise qualified to operate the proposed station, that no interference would be caused to any existing or proposed station but that the proposed station may not comply with the Standards of Good Engineering Practice, particularly with reference to the requirements for operation of a Class IV station on a regional channel;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing commencing at 10:00 a. m. on January 3, 1951, at Washington, D. C., upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station, and the character of other broadcast service available to such areas and populations.

2. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations, with particular reference to the requirements of the Standards for operation of a Class IV station on a regional channel.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6831; Filed, Aug. 3, 1950; 8:48 a. m.]

[Docket No. 9738]

WHARTON COUNTY BROADCASTING CO., INC. (KULP)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Wharton County Broadcasting Company, Inc., (KULP) El Campo, Texas, for construction permit; Docket No. 9738, File No. BP-7644.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 21st day of July 1950;

The Commission having under consideration the above-entitled application of Wharton County Broadcasting Company, Inc., to change the power and hours of operation of Station KULP, El Campo, Texas, from 500 watts daytime only to 500 watts daytime, 100 watts nighttime, unlimited time while operating on frequency 1390 kc; and

It appearing, that the applicant is legally, technically, financially and otherwise qualified to operate Station KULP, as proposed;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the above-entitled application is designated for hearing to commence at 10:00 a. m. on January 8, 1951 at Washington, D. C., upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the Station KULP, as proposed, and the character of other broadcast service available to such areas and populations.

2. To determine whether the operation of the Station KULP, as proposed, would involve objectionable interference with any existing broadcast station, and if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of the Station KULP, as proposed, would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the operation of Station KULP, as proposed, would be in compliance with the Commission's Standards of Good Engineering Practice Concerning Standard Broadcast Stations with particular reference to the ratio of the population within the normally protected and actual nighttime interference-free contours to the population which would receive satisfactory service; to the assignment of a Class IV nighttime operation on a regional channel and to the type of transmitter proposed.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6833; Filed, Aug. 3, 1950; 8:49 a. m.]

[Docket No. 9739]

EVANGELINE BROADCASTING CO., INC. (KVOL)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Evangeline Broadcasting Company, Inc. (KVOL), Lafayette, Louisiana, for modification of construction permit; Docket No. 9739, File No. BMP-5098.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 21st day of July 1950;

The Commission having under consideration the above-entitled application for modification of construction permit (File No. BP-5668 which authorized change of frequency and power of Station KVOL, Lafayette, Louisiana, from frequency 1340 kilocycles, 250 watts power to frequency 1330 kilocycles, 1 kilowatt power) to increase daytime power to 5 kilowatts, to decrease height of the south tower of the antenna system, to change type of transmitter and to change towers from shunt fed to series fed, and also having under consideration a petition filed on June 6, 1950, by Shamrock Broadcasting Company, licensee of Station KXYZ, Houston, Texas, requesting that the said application be designated for hearing and petitioner be made a party to the proceeding on the basis of objectionable interference to Station KXYZ;

It appearing, that the applicant is legally, technically, financially and otherwise qualified to construct and operate Station KVOL as proposed, but that the application may involve interference with one or more existing stations and otherwise not comply with the Standards of Good Engineering Practice;

It is ordered, That the said petition is granted and pursuant to section 309 (a) of the Communications Act of 1934, as

amended, the said application is designated for hearing at 10:00 a. m. on January 10, 1951, at Washington, D. C., upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of Station KVOL as proposed, and the character of other broadcast service available to such areas and populations.

2. To determine whether the operation of Station KVOL as proposed would involve objectionable interference with Stations KXYZ, Houston, Texas, KOLE, Port Arthur, Texas, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of Station KVOL as proposed would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of Station KVOL as proposed would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations with particular reference to the population residing within the 250 mv/m blanket contour.

5. To determine the overlap, if any, that will exist between the service areas of Station KANE, New Iberia, Louisiana, and the operation of Station KVOL as proposed, the nature and extent thereof, and whether such overlap, if any, is in contravention of § 3.35 of the Commission's rules.

It is further ordered, That Shamrock Broadcasting Company, licensee of Station KXYZ, Houston, Texas, and Mary A. Petru and Socs N. Vratis d/b as Port Arthur Broadcasting Company, licensee of Station KOLE, Port Arthur, Texas, are made parties to the proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6834; Filed, Aug. 3, 1950; 8:49 a. m.]

[Docket No. 9741]

LOGAN BROADCASTING CORP. (WVOW)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Logan Broadcasting Corporation (WVOW), Logan, West Virginia, for modification of construction permit; Docket No. 9741, File No. BMP-5144.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 21st day of July 1950;

The Commission having under consideration (1) the above-entitled application for modification of construction permit to increase nighttime power from 1 kilowatt to 5 kilowatts and make changes in the antenna system at Station WVOW, Logan, West Virginia, and (2) a petition, filed May 29, 1950, by the Logan Broadcasting Corporation (WVOW), for immediate consideration and grant of the instant application without hearing;

It appearing, that the applicant is legally, technically, financially and otherwise qualified to operate Station WVOW as proposed, but that the application may involve interference with one or more existing stations and otherwise not comply with the Standards of Good Engineering Practice;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing commencing at 10:00 a. m., on January 15, 1951, at Washington, D. C., upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station, and the character of other broadcast service available to such areas and populations.

2. To determine whether the operation of the proposed station would involve objectionable interference with Stations KOIL, Omaha, Nebraska; WKNE, Keene, New Hampshire; WNBF, Binghamton, New York; KTRN, Wichita Falls, Texas; KRGV, Weslaco, Texas; and WHIO, Dayton, Ohio, or with any other existing broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations, with particular reference to the nighttime coverage to the city of Logan, West Virginia.

It is further ordered, That the petition for immediate consideration and grant without hearing, filed by the Logan Broadcasting Corporation, is denied.

It is further ordered, That Central States Broadcasting Company, licensee of Station KOIL, Omaha, Nebraska; WKNE Corporation, licensee of Station WKNE, Keene, New Hampshire; Clark Associates, Inc.; licensee of Station WNBF, Binghamton, New York; Texoma Broadcasting Company, licensee of Station KTRN, Wichita Falls, Texas, Taylor Radio & Television Corporation, licensee of Station KRGV, Weslaco, Texas, and Miami Valley Broadcasting Corporation, licensee of Station WHIO, Dayton, Ohio, are made parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6836; Filed, Aug. 3, 1950; 8:49 a. m.]

[Docket Nos. 9742, 9743]

SKY WAY BROADCASTING CORP. AND ATHENS BROADCASTING CO.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of: Sky Way Broadcasting Corporation, Columbus, Ohio, Docket No. 9742, File No. BP-7655; Athens Broadcasting Company, Athens, Ohio, Docket No. 9743, File No. BP-7688; for construction permits.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 21st day of July 1950;

The Commission having under consideration the above-entitled applications of Sky Way Broadcasting Corporation for a construction permit for a new standard broadcast station to operate with the facilities 1580 kilocycles, 1 kilowatt power, daytime only with a directional antenna at Columbus, Ohio, and of the Athens Broadcasting Company for a construction permit for a new standard broadcast station to operate with the facilities 1580 kilocycles, 1 kilowatt power daytime only at Athens, Ohio;

It is ordered, That pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said applications are designated for hearing in a consolidated proceeding at Washington, D. C., at 10:00 a. m. on the 18th day of January 1951 upon the following issues:

1. To determine the legal, technical, financial and other qualifications of the applicant corporations, their officers, directors and stockholders to construct and operate the proposed stations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed stations and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of the proposed stations would involve objectionable interference with any existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the operation of the proposed stations would involve objectionable interference with each other or with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposed stations would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

7. To determine the overlap, if any, that will exist between the service areas of the station proposed by Sky Way

Broadcasting Corporation at Columbus, Ohio and of Station WONE at Dayton, Ohio, the nature and extent thereof, and whether such overlap, if any, is in contravention of § 3.35 of the Commission's rules.

8. To determine on a comparative basis which, if either, of the applications in this consolidated proceeding should be granted.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6837; Filed, Aug. 3, 1950; 8:49 a. m.]

[Docket Nos. 9744, 9745]

ROLLINS BROADCASTING, INC., AND ELIZABETH EVANS

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Rollins Broadcasting, Inc., Georgetown, Delaware, Docket No. 9744, File No. BP-7616; Elizabeth Evans, Seaford, Delaware, Docket No. 9745, File No. BP-7693; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 21st day of July 1950;

The Commission having under consideration the above-entitled applications of Rollins Broadcasting, Inc., requesting a construction permit for a new standard broadcast station to operate on frequency 900 kc., with 1 kw. power, daytime only at Georgetown, Delaware, and of Elizabeth Evans requesting a construction permit for a new standard broadcast station to operate on frequency 900 kc., with 1 kw. power, daytime only at Seaford, Delaware; and

It appearing, that the above applicants are legally qualified to operate the proposed stations but that the proposals involve objectionable interference with one another;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding commencing at 10:00 a. m. on January 22, 1951 at Washington, D. C., upon the following issues:

1. To determine the technical, financial and other qualifications of the corporate applicant, its officers, directors and stockholders and of the individual applicant to construct and operate the broadcast stations as proposed in their respective applications.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed stations, and the character of other broadcast service available to such areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of the proposed stations would involve objectionable interference with any existing broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the operation of the proposed stations would involve objectionable interference, each with the other, or with the services proposed in any other pending applications for broadcast facilities, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposed stations would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

7. To determine on a comparative basis which, if either, of the applications in this consolidated proceeding should be granted.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6838; Filed, Aug. 3, 1950; 8:49 a. m.]

[Docket No. 9746]

INTERLAKE BROADCASTING CORP. (KXRN)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Interlake Broadcasting Corporation (KXRN), Renton, Washington, for construction permit; Docket No. 9746, File No. BP-7560.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 21st day of July 1950;

The Commission having under consideration the above-entitled application for a construction permit to change frequency to 1230 kilocycles and share time with Station KTW, Seattle, Washington, which station presently operates on 1250 kilocycles and shares time with Station KWSC, Pullman, Washington;

It appearing, that the applicant is legally, technically, financially, and otherwise qualified to construct and operate Station KXRN, as proposed, but that the operation of Station KXRN, as proposed, may involve conflict with the Commission's rules and regulations and Standards of Good Engineering Practice and may result in an inefficient utilization of the frequency 1230 kilocycles and that for these reasons among others the Commission is unable to conclude that a grant of the above-entitled application would be in the public interest, convenience, and necessity; and

It further appearing, that a grant of the above-entitled application may involve a modification of the license of Station KTW and that the licensee of KTW has not consented thereto,

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing at Washington, D. C., at 10:00 a. m. on the 8th day of January 1951, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of Station KXRN, as proposed, and the character of other broadcast service available to those areas and populations.

2. To determine whether, and to what extent, the operation of Station KXRN, as proposed, would preclude the more efficient utilization of the frequency 1230 kc.

3. To determine whether a grant of the application would require a modification of the license of Station KTW and, if so, whether such modification would serve public interest, convenience, and necessity.

4. To determine whether the operation of Station KXRN, as proposed, would be in conflict with the Commission's rules and regulations and the Standards of Good Engineering Practice concerning standard broadcast stations with particular reference to § 3.23 (d) of the rules and the extent and quality of service to be rendered to the Seattle Metropolitan District.

It is further ordered, That The First Presbyterian Church of Seattle, Washington, licensee of Station KTW, Seattle, Washington, is made a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6839; Filed, Aug. 3, 1950; 8:49 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-1281]

MISSISSIPPI RIVER FUEL CORP.

NOTICE OF OPINION NO. 198 AND ORDER

AUGUST 1, 1950.

Notice is hereby given that, on July 27, 1950, the Federal Power Commission issued its Opinion No. 198 and order entered July 27, 1950, in the above-designated matter, in part issuing a certificate of public convenience and necessity and in part reopening the proceeding.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 50-6826; Filed, Aug. 3, 1950; 8:47 a. m.]

[Docket No. G-1447]

UNITED GAS PIPE LINE CO.

NOTICE OF APPLICATION

JULY 31, 1950.

Take notice that United Gas Pipe Line Company (Applicant) a Delaware corporation, having its principal place of business at 1525 Fairfield Avenue, Shreveport, Louisiana, filed on July 24, 1950, an application for a certificate of public convenience and necessity pur-

suant to section 7 (c) of the Natural Gas Act, as amended, authorizing the construction and operation of certain natural gas transmission pipeline facilities as hereinafter described.

Applicant proposes to construct 1,005 miles of natural gas transmission pipeline as hereinafter described together with appurtenant facilities:

(1) Approximately 451.3 miles of 30-inch, 5.8 miles of 26-inch and 53.4 miles of 24-inch pipeline extending from a point in the Augua Dulce Field in southern Texas, in a northeasterly direction to a point near Monroe, Louisiana. Said pipeline to have a delivery capacity of approximately 415,000 Mcf. per day.

(2) Approximately 211.9 miles of 30-inch, 13.4 miles of 26-inch, 3.7 miles of 24-inch and 15.5 miles of 20-inch pipeline extending from the Eugene Island area in a northeasterly direction to Applicant's Jackson-Mississippi compressor station; approximately 10.4 miles of 26-inch, 24.6 miles of 24-inch and 17.4 miles of 20-inch pipeline extending from Lirette, Louisiana, and tying into the above-mentioned 30-inch line at a point near Napoleonville, Louisiana; approximately 23.6 miles of 20-inch, 8.8 miles of 16-inch and 28.2 miles of 12-inch pipeline from Applicant's proposed Lafayette compressor station and tying into the above-mentioned 30-inch line at a point southeast of Franklin, Louisiana; approximately 42.4 miles of 24-inch pipeline extending from Applicant's proposed Burna compressor station in south Mississippi, to Applicant's Baxterville Dehydration plant, and approximately 59.6 miles of 30-inch pipeline extending from Applicant's Jackson compressor station and terminating at the proposed delivery point to Texas Eastern Transmission Corporation southeast of Kosciusko, Mississippi. Said pipelines to have a delivery capacity of approximately 390,000 Mcf. of gas per day at the proposed Kosciusko delivery point.

(3) Approximately 4.6 miles of 16-inch, 6.7 miles of 12-inch, and 12.3 miles of 8-inch pipeline to connect various fields in south Louisiana, to the proposed augmented facilities.

The estimated over-all capital cost of the proposed project is $111,510,000.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 17th day of August 1950. The application is on file with the Commission for public inspection.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 50-6812; Filed, Aug. 3, 1950; 8:45 a. m.]

[Project No. 2016]

CITY OF TACOMA, WASHINGTON

ORDER FIXING HEARING

JULY 28, 1950.

On December 28, 1948, the city of Tacoma, Washington, filed an application for a license under the Federal Power Act for a proposed hydroelectric development (Project No. 2016) to be located in and along the Cowlitz River in the vicinity of Mayfield and Mossyrock, Washington. The original application was revised and supplemented on June 20, 1949, and a revised Exhibit N to the application was filed on June 8, 1950.

Public notice of the filing of the application for license for Project No. 2016 has been given.

In a separate proceeding (Docket No. E-6156) the Commission found on March 8, 1949, that construction and operation of the project proposed by the City would affect lands or reservations of the United States; that the construction of either or both of the proposed reservoirs (Mayfield and Mossyrock) would materially affect the navigable capacity of the Cowlitz River below the site of the proposed project; and that the interest of interstate or foreign commerce would be affected by the construction and operation of either or both of the reservoirs proposed by the City of Tacoma. On the basis of these findings the Commission entered the following order on the same date: As provided in section 23 (b) of the Federal Power Act the City of Tacoma, before commencing construction of either of the proposed reservoirs, shall have received a license therefor under the provisions of the Federal Power Act.

Widespread public interest in the City of Tacoma's proposal to construct the project is indicated by the large number of communications urging approval or disapproval of the application. In addition, many requests for a public hearing have been received.

The Commission finds: It is in the public interest to hold a public hearing respecting the matters involved and the issues presented in this proceeding.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by the Federal Power Act, particularly sections 4, 6, and 308 thereof, and the Commission's rules of practice and procedure (in force January 1, 1948, as amended and supplemented), a public hearing be held on the 3d day of October 1950, at 10:00 a. m., e. s. t., in the Hearing Room of the Commission, 12th Floor, 1800 Pennsylvania Avenue NW., Washington, D. C.

(B) As provided in Rule 30 (18 CFR 1.30) of the Commission's rules of practice and procedure, the officer hereafter designated to preside at the hearing shall certify the record of the hearing, including his report thereon, to the Commission for its decision and the presiding officer's report shall constitute a recommended decision.

Date of issuance: July 31, 1950.

By the Commission.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 50-6813; Filed, Aug. 3, 1950; 8:45 a. m.]

[Docket Nos. G-1116, G-1240, G-1317, G-1344, G-1417, G-1152, G-1415, G-1379]

PAN HANDLE EASTERN PIPE LINE CO. ET AL.

ORDER MODIFYING AND AMENDING PREVIOUS ORDER

JULY 28, 1950.

In the matters of Panhandle Eastern Pipe Line Company, City of Port Huron, City of Marysville, City of St. Clair, Michigan, municipal corporations; Docket Nos. G-1116, G-1240, G-1317, G-1344, G-1417; Southeastern Michigan Gas Company, Docket No. G-1152; Michigan Consolidated Gas Company, complainant, Docket No. G-1415; v. Panhandle Eastern Pipe Line Company, defendant, Docket No. G-1379.

In an "Order Consolidating Proceedings, Fixing Date of Hearing and Prescribing Procedure" issued July 13, 1950, the Commission designated the order in which evidence should be presented with respect to the matters and issues involved in the various proceedings in the above-docketed matters which, by the aforesaid order, were consolidated for hearing.

The Commission stated in the order issued July 13, 1950, "that the presentation of evidence at the hearing in the consolidated proceedings should relate to the following issues and that such presentation should be in the order in which the issues are listed as follows:

"1. Whether the designed sales capacity of the Panhandle system of 550,000 Mcf. which is the total expected to be available during the latter part of 1950 will be adequate to satisfy all the requirements of customers dependent in whole or in part upon the Panhandle system for their supplies of natural gas.

"2. The just and reasonable service rules and regulations which should be made applicable to deliveries of natural gas from the Panhandle system in the event that the evidence discloses that the capacity of the Panhandle system is, or will be, inadequate to satisfy all the requirements of customers served from the system.

"3. (a) Whether the Commission should find it necessary or desirable in the public interest to grant the orders sought in Docket No. G-1152 and in Docket No. G-1415 or either of them, while the designed sales capacity of the Panhandle system approximates 550,000 Mcf. per day; and (b) the matters and issues presented in the proceedings in Docket Nos. G-1417 and G-1379.

"4. The form of tariff which should be applicable to volumes of gas delivered from the Panhandle system when the capacity of such system has been increased by additional natural gas supplies from the Trunkline Gas Supply Company project, i. e., whether Panhandle should be permitted to charge a "rolled-in-rate," demand and commodity in form, and with a minimum bill provision.

"5. The matters and issues presented by the application in Docket No. G-1344.

"6. What would be a fair, reasonable and equitable distribution among present and prospective customers of the volumes of natural gas which will be available upon completion of the Trunkline and Panhandle facilities authorized in Docket Nos. G-882 and G-1317.

"7. Whether Panhandle's present rates, charges, classifications, rules, regulations, practices and contracts are unjust, unreasonable, unduly discriminatory or preferential, and if found to be unjust, unreasonable, unduly discriminatory or preferential, what would be the just and reasonable rates, charges, clas-

sifications, rules, regulations, practices and contracts to be determined and fixed by order.

"8. The just and reasonable rates, charges, classifications, rules, regulations, practices and contracts (or the principles to be followed in the determination of the foregoing), which should be made applicable to volumes of gas deliverable from the Panhandle system when the sales capacity has been increased by the supply of natural gas to be received from Trunkline Gas Supply Company.

"9. The status of outstanding authorizations issued by the Commission in Docket Nos. G-706 and G-876, and whether such authorizations should be modified, and if so, to what extent."

The Commission finds: Good cause exists for modifying and amending the order issued July 13, 1950, in the above docketed proceedings so as to provide for hearing with respect to the issues presented in the proceedings on the dates and in the order hereinafter specified.

The Commission orders:

(A) The order issued July 13, 1950, be and the same is hereby amended to provide as follows:

The public hearing set to commence on August 14, 1950, at 10:00 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., shall be limited to the presentation of evidence with respect to the issues of: "Whether the Commission should find it necessary or desirable in the public interest to grant the orders sought in Docket No. G-1152 and in Docket No. G-1415 or either of them, while the designed sales capacity of the Panhandle system approximates 550,000 Mcf per day" as set forth in paragraph 3 (a) of the Commission's order issued July 13, 1950.

(B) The hearing insofar as it concerns other issues set forth in paragraphs 1, 2, 3 (b), 4, 5, 6, 7, 8 and 9 (and the presentation of evidence relating thereto) be and it is hereby postponed until September 6, 1950, at 10:00 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, NW., Washington, D. C. The presentation of evidence to follow the order set forth in the Commission's order issued July 13, except as such order has been modified herein.

Date of issuance: July 31, 1950.

By the Commission.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 50-6814; Filed, Aug. 3, 1950; 8:45 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 25291]

COFFEE FROM NORTH ATLANTIC PORTS TO OFFICIAL TERRITORY

APPLICATION FOR RELIEF

AUGUST 1, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: C. W. Boin, Agent, for and on behalf of carriers parties to the tariffs named below.

Commodities involved: Coffee, green or roasted, carloads.

From: North Atlantic ports and points taking same rates.

To: Points in official territory.

Grounds for relief: Circuitous routes and port relationships.

Schedules filed containing proposed rates: C. W. Boin's tariff I. C. C. No. A-913. I. N. Doe's tariff I. C. C. No. 597. P. W. Phillips' tariff I. C. C. No. 223, Supp. 28. NYNH&H RR., tariff I. C. C. No. F-4120, Supp. 22. W. Md. Ry., tariff I. C. C. No. 8785, Supp. 86.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 50-6824; Filed, Aug. 3, 1950; 8:45 a. m.]

[4th Sec. Application 25292]

VARIOUS COMMODITIES BETWEEN POINTS IN TEXAS

APPLICATION FOR RELIEF

AUGUST 1, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: Ira D. Dodge, Agent, for and on behalf of carriers parties to his tariff I. C. C. No. 666.

Commodities involved: Coke, coke breeze, coke dust aud coke screenings, carloads. Pipe, wrought or cast iron, and related articles, carloads.

Between: Points in Texas.

Grounds for relief: Circuitous routes and to meet intrastate rates.

Schedules filed containing proposed rates: Ira D. Dodge's tariff I. C. C. No. 666, Supp. 119.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 50-6825; Filed, Aug. 3, 1950; 8:47 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 7-1243]

STANDARD OIL CO. (OHIO)

NOTICE OF APPLICATION FOR UNLISTED TRADING PRIVILEGES, AND OF OPPORTUNITY FOR HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 31st day of July A. D. 1950.

The Boston Stock Exchange, pursuant to section 12 (f) (2) of the Securities Exchange Act of 1934 and Rule X-12F-1 thereunder, has made application for unlisted trading privileges in the Common Stock, $10 Par Value, of Standard Oil Company (Ohio), a security listed and registered on the New York Stock Exchange. Rule X-12F-1 provides that the applicant shall furnish a copy of the application to the issuer and to every exchange on which the security is listed or already admitted to unlisted trading privileges. The application is available for public inspection at the Commission's principal office in Washington, D. C.

Notice is hereby given that, upon request of any interested person received prior to August 14, 1950, the Commission will set this matter down for hearing. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application, and other information contained in the official file of the Commission pertaining to this matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 50-6822; Filed, Aug. 3, 1950; 8:47 a. m.]

[File No. 7-1244]

WESTINGHOUSE AIR BRAKE CO.

NOTICE OF APPLICATION FOR UNLISTED TRADING PRIVILEGES, AND OF OPPORTUNITY FOR HEARING

At a regular session of the Securities and Exchange Commission, held at its

office in the city of Washington, D. C., on the 31st day of July A. D. 1950.

The Boston Stock Exchange, pursuant to section 12 (f) (2) of the Securities Exchange Act of 1934 and Rule X-12F-1 thereunder, has made application for unlisted trading privileges in the Common Stock, No Par Value, of Westinghouse Air Brake Company, a security listed and registered on the New York Stock Exchange. Rule X-12F-1 provides that the applicant shall furnish a copy of the application to the issuer and to every exchange on which the security is listed or already admitted to unlisted trading privileges. The application is available for public inspection at the Commission's principal office in Washington, D. C.

Notice is hereby given that, upon request of any interested person received prior to August 14, 1950, the Commission will set this matter down for hearing. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application, and other information contained in the official file of the Commission pertaining to this matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 50-6823; Filed, Aug. 3, 1950; 8:47 a. m.]

[File Nos. 31-574, 70-2441]

ARKANSAS POWER & LIGHT CO. ET AL.

NOTICE OF FILING, NOTICE OF AND ORDER FOR HEARING, AND ORDER OF CONSOLIDATION

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 28th day of July A. D. 1950.

In the matter of Arkansas Power & Light Company, Midsouth Gas Company, File No. 70-2441; In the matter of Equitable Securities Corporation, T. J. Raney & Sons, Womeldorff & Lindsey, File No. 31-574.

Notice is hereby given that Arkansas Power & Light Company ("Arkansas"), a utility subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a declaration pursuant to the Public Utility Holding Company Act of 1935 regarding the sale of all of its gas distribution systems or properties and related facilities to Midsouth Gas Company ("Midsouth Gas") and has designated section 11 (b) of the Public Utility Holding Company Act and Rule U-44 of the rules and regulations promulgated thereunder as applicable to the proposed transactions:

Notice is further given that an application pursuant to sections 3 (a) (3) and 3 (a) (4) of the act for an exemption from all of the provisions of the act applicable to registered holding companies has been filed by Equitable Securities Corporation, T. J. Raney & Sons and Womeldorff & Lindsey (hereinafter collectively referred to as the Equitable Group). The Equitable Group propose to be the owners of the common stock of Midsouth Gas. The application for exemption is predicated on the contention that the acquisition of the common stock of Midsouth Gas is only a temporary one in connection with a bona fide arrangement for the distribution of such common stock.

All interested persons are referred to said declaration and to said application, which are on file in the office of this Commission, for a statement of the transactions therein proposed, which are summarized as follows:

Arkansas proposes to sell its existing gas properties for a cash cosideration of $1,825,000 which represents the depreciated book cost of such properties, plus or minus certain closing adjustments. In addition, Midsouth Gas undertakes to construct or acquire and operate a gas transmission line to deliver the gas fuel supply to a steam generating station of Arkansas presently under construction. Midsouth Gas further undertakes the construction and operation of facilities which will furnish natural gas service to communities heretofore not supplied with natural gas in the area of the proposed transmission line. The declaration of Arkansas states that proceeds from the proposed sale will be reinvested in the company's business.

The application of the Equitable Group states that the acquisition by Midsouth Gas of the Arkansas gas assets together with the initial working capital requirements will require $2,300,000, and that the contemplated additional requirements for construction and working capital of Midsouth Gas during the years 1950 and 1951 are estimated at $7,400,000.

The Equitable Group application sets forth that the initial requirements are proposed to be obtained from the sale of sufficient shares of common stock of Midsouth Gas to the Equitable Group to raise the net amount of $800,000 and the sale of $1,500,000 principal amount of 20 year, 3⅝ percent first mortgage bonds to institutional investors. It is further proposed that at the time of such initial financing, arrangements will be made for the sale to such institutional investors of an additional $5,400,000 principal amount of such bonds to be sold by Midsouth Gas during 1950 and 1951, the remainder of the funds to be obtained from the sale to the public in 1950 of sufficient shares of the common stock of Midsouth Gas to raise $2,000,000.

Equitable Securities Corporation presently owns all of the outstanding stock of Chattanooga Gas Company, and, pursuant to an order of the Commission dated December 30, 1949, was exempted from all of the provisions of the act. The application states that neither of the other members of the Equitable Group is an affiliate of any public utility company nor is a subsidiary of a company which is a public utility company.

The application further sets forth that it is the intention of the Equitable Group to effect an underwriting or distribution of the common stock of Midsouth Gas within one year after the issuance of an order for exemption, subject to such extension of time as the Commission may permit. It is stated that the applicants desire, subject to market conditions, to retain such securities only during the period of organization and initial operation of Midsouth Gas.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a hearing be held with respect to such matters and that said application and declaration should not be granted or permitted to become effective except pursuant to further order of this Commission; and

It further appearing to the Commission that the foregoing matters under File Nos. 70-2441 and 31-574 relate to and involve common questions of law and fact; that evidence offered in respect to each of such matters may have a bearing on the other; that a substantial savings in time, effort and expense will result if the hearings on said matters are consolidated so that they may be heard as one matter; and, so that evidence adduced with respect to each of said matters may stand as evidence in respect of all of said matters for all purposes:

It is ordered, That the hearing in the matter of Arkansas Power & Light Company, File No. 70-2441 be consolidated with the hearing in the matters of Equitable Securities Corporation, et al., File No. 31-574; the Commission reserving the right, if at any time, it may appear conducive to an orderly and economical disposition of said matters, to order a separate hearing concerning any one of such matters, to close the record with respect to any one or more of such matters, or to take separate action on any one or more of such matters prior to the closing of the record or any other matter.

It is further ordered, That a hearing on such matters under the applicable provisions of said act and rules and regulations of the Commission thereunder be held on August 9, 1950, at 10:00 a. m., e. d. s. t., at the offices of the Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. On such day the hearing room clerk in Room 193 will advise as to the room where such hearing will be held. Any person desiring to be heard or otherwise wishing to participate in this proceeding shall file with the Secretary of the Commission on or before August 7, 1950 a request relative thereto as provided in Rule XVII of the Commission's rules of practice.

It is further ordered, That William W. Swift, or any other officer or officers of this Commission designated by it for that purpose shall preside at such hearing. The officer or officers so designated to preside at such hearing are hereby authorized to exercise all powers granted to the Commission under section 18 (c) of the act and to a Hearing Officer under the Commission's rules of practice.

The Division of Public Utilities having advised the Commission that it has made a preliminary examination of the declaration and application and that upon the basis thereof the following matters and questions are presented for consideration, without prejudice to its specifying

additional matters and questions upon further examination.

(1) Whether the sale of the gas properties of Arkansas, as now proposed or as hereinafter modified, meets the requirements of section 12 (d) of the act and the requirements of any other applicable provisions of the act and the rules and regulations thereunder.

(2) Whether the proposed disposition of Arkansas is necessary or appropriate to effectuate the provisions of section 11 (b) of the act.

(3) Whether the fees and expenses to be paid, directly or indirectly in connection with the proposed transactions are unreasonable.

(4) Whether the accounting treatment of the proposed transactions is in accordance with sound accounting principles.

(5) Whether the Equitable Group application for exemption meets the requirements of sections 3 (a) (3) and 3 (a) (4) of the act.

(6) Whether in the event that the requirements of sections 3 (a) (3) and 3 (a) (4) of the act are satisfied, the proposed exemption is detrimental to the public interest or the interest of investors or consumers, and whether in this connection the contemplated sale of bonds to institutional investors is adverse to the public interest or to the interest of investors or consumers.

(7) Whether the joint application by the Equitable Group for an exemption from all of the provisions of the act should be granted, and if granted, whether any conditions with respect to the applicability of any particular section of the act or with respect to notice of any proposed transaction should be imposed upon Midsouth Gas or all or any of the applicants herein.

(8) Whether the proposed acquisition by Midsouth Gas and the Equitable Group meets the applicable provisions of the act.

(9) Generally, whether the proposed transactions comply with all of the applicable provisions and requirements of the act and the rules and regulations promulgated thereunder and whether it is necessary or appropriate in the public interest and for the protection of investors or consumers and to prevent the circumvention of the provisions of the act and the rules and regulations to impose any conditions in connection with any of the proposed transactions.

It is further ordered, That at said hearing evidence shall be adduced with respect to the foregoing matters and questions.

It is further ordered, That the Secretary of the Commission shall serve by registered mail a copy of this order on the declarant and applicants herein, Middle South Utilities, Inc., the Arkansas Public Service Commission, the Federal Power Commission, and the Mayors of the cities of Helena, West Helena, Marianna, Forrest City, Brinkley, Wynne, West Memphis, Paragould, Searcy, Batesville, Newport, Jonesboro, and McGhee, in the state of Arkansas, and that notice to all other persons shall be given by publication of this notice in the FEDERAL REGISTER and by general release of the Commission distributed to the press and mailed to the names on the Commission's list for release issued under the Public Utility Holding Company Act of 1935.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 50-6820; Filed, Aug. 3, 1950; 8:47 a. m.]

[File No. 812-670]

INVESTORS DIVERSIFIED SERVICES, INC. ET AL.

NOTICE OF APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C. on the 28th day of July A. D. 1950.

In the matter of Investors Diversified Services, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc. and Investors Mutual, Inc., File No. 812-670.

Notice is hereby given that Investors Diversified Services, Inc. ("I. D. S."), Investors Selective Fund, Inc. ("Selective"), Investors Stock Fund, Inc. ("Stock") and Investors Mutual, Inc. ("Mutual"), have jointly filed an application pursuant to section 6 (c) of the Investment Company Act of 1940 ("act") for an order of exemption from the provisions of section 22 (d) of the act.

I. D. S. is a registered face amount certificate company under the act, was the organizer and promoter of each of the other applicants hereto, acts as principal underwriter in the distribution of their shares and as investment adviser for each of them. Selective, Stock and Mutual are affiliated companies of I. D. S.; are registered open-end investment companies under the act; and, through I. D. S. are offering to the public shares which are registered under the Securities Act of 1933, as amended. While each of the open-end companies is a separate company, the proposals made in the application are stated to be possible only because I. D. S. is the principal underwriter for each of the companies.

It is stated in the application that the practice of providing graduated scales for sales commissions is well established by custom and precedent and that the applicant companies themselves have followed this practice as is shown by the present sales commissions set forth in their registration statement and prospectuses; for example the present graduated gross sales commissions for Mutual and Stock are as follows:

Amount of application	Investment in underlying assets per $100	Loading charge per $100
To $24,950	$92.50	$7.50
$25,000 to $49,950	94.25	5.75
$50,000 to $99,950	95.50	4.50
$100,000 or more	96.00	4.00

The sales commission schedule for Investors Selective Fund, Inc., is slightly lower but is graduated on a basis consistent with the above.

The variations of the proposed public offering prices of shares of the applicant open-end companies as proposed, and for which an order of exemption from section 22 (d) of the act is requested, are as follows:

1. The public offering price of the shares of capital stock of the applicant open-end investment companies is to be computed by adding to the asset value of the shares of the respective company as of the date of sale, a sales commission graduated according to the amount of the sale, or the accumulation of sales to the same individual (to the extent that shares previously purchased are still registered in his name) in accordance with the following schedules:

SHARES OF INVESTORS SELECTIVE FUND, INC.

	Sales commission	
	Percent of public offering price	Approximate percent of asset value
To $15,000	6½	6.95
$15,000 to $20,000	6	6.38
$20,000 to $25,000	5½	5.82
$25,000 to $30,000	5	5.26
$30,000 to $50,000	4½	4.71
$50,000 to $100,000	4	4.17
$100,000 to $200,000	3½	3.63
$200,000 to $400,000	3	3.09
$400,000 to $700,000	2½	2.56
$700,000 to $1,000,000	2	2.04
$1,000,000 and over	1½	1.52

SHARES OF INVESTORS MUTUAL, INC., AND INVESTORS STOCK FUND, INC.

	Sales commission	
	Percent of public offering price	Approximate percent of asset value
To $15,000	7½	8.10
$15,000 to $20,000	7	7.52
$20,000 to $25,000	6½	6.95
$25,000 to $30,000	6	6.38
$30,000 to $40,000	5½	5.82
$40,000 to $50,000	5	5.26
$50,000 to $75,000	4½	4.71
$75,000 to $100,000	4	4.17
$100,000 to $200,000	3½	3.63
$200,000 to $400,000	3	3.09
$400,000 to $700,000	2½	2.56
$700,000 to $1,000,000	2	2.04
$1,000,000 and over	1½	1.52

The above graduated sales commissions will apply on initial purchases in the amounts stated, and also to any subsequent purchases where the aggregate investment of the same shareholder (to the extent that shares previously purchased are still registered in his name) exceeds $15,000.

2. That the graduated scale of commissions applicable, in the manner stated in the previous paragraph, will apply to purchases of a shareholder for shares representing a combination of any of the three funds, as well as to additions to aggregate holdings in each of the companies.

3. That the scale of sales commissions, shown in paragraph numbered 1 above, will be applicable to any investment by a single purchaser even though such purchase may be divided among several accounts if all of such accounts are those of husband and wife and their children under twenty-one years of age. It also is intended that individual or corporate trustees, guardians or other fiduciary custodians may have the benefit of the foregoing graduated scale of sales commissions for their fiduciary or guardianship accounts (including accounts in which they have cofiduciaries).

4. Since the principal underwriter may allow commissions or discounts to brokers, dealers or authorized sales representatives in an amount not in excess of the gross sales load such underwriter receives, it is proposed that any person authorized to sell shares of the funds may acquire shares for his own account at the public offering price less that commission or discount, but in no event at a price less than the asset value thereof.

5. That the underwriter may allow the officers, directors and employees of the applicants, the right to purchase shares of the applicant open-end investment companies for their own account at a discount (but at not less than the asset value per share), provided in each instance such shares are purchased for investment and not for resale.

Persons referred to in paragraphs 4 and 5, who purchase securities for their own account, will be required to furnish assurances that shares so acquired will not be resold except by regular redemption, and all persons referred to in those paragraphs are to receive the same discount.

Since the above proposals in the manner set forth may result in varying prices to members of the public of the shares of the open-end applicant companies and thus contravene the policy, purposes and provisions of section 22 (d) of the act, the applicants seek an order of exemption to the extent necessary to permit the offering of the shares of Selective Stock and Mutual on the basis proposed.

All interested persons are referred to said application which is on file in the Washington, D. C. office of the Commission for a more detailed statement of the matters of fact and law therein asserted.

Notice is further given that an order granting the application, in whole or in part and upon such conditions as the Commission may deem necessary or appropriate, may be issued by the Commission at any time on or after August 10, 1950, unless a hearing upon the application is ordered by the Commission as provided in Rule N-5 of the rules and regulations promulgated under the act. Any interested person may, not later than August 8, 1950, at 5:30 p. m., e. d. s. t., submit to the Commission in writing his views or any additional facts bearing upon this application or the desirability of a hearing thereon, or request in writing that the Commission order a hearing to be held thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C., and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact or law raised by the application which he desires to controvert.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 50-6321; Filed, Aug. 3, 1950; 8:47 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 14903]

WILHELM WAPPENSCHMIDT

In re: Estate of Wilhelm Wappenschmidt, also known as Hubert William Wappenschmidt, William Hubert Wappenschmidt, and William Wappenschmidt, deceased. File No. D-28-12024; E. T. sec. 16218.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Mrs. Jacob Wappenschmidt, Miss Gertrude Wappenschmidt, Anton Wappenschmidt, Joseph Wappenschmidt, Marie Wappenschmidt and Theodore Wappenschmidt, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That the domiciliary personal representatives, heirs, next-of-kin, legatees and distributees, names unknown, of Wilhelm Wappenschmidt, also known as Hubert William Wappenschmidt, William Hubert Wappenschmidt, and William Wappenschmidt, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraphs 1 and 2 hereof, and each of them, in and to the estate of Wilhelm Wappenschmidt, also known as Hubert William Wappenschmidt, William Hubert Wappenschmidt and William Wappenschmidt, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

4. That such property is in the process of administration by the Detroit Trust Company, as administrator, c. t. a., acting under the judicial supervision of the Probate Court of Wayne County, Michigan;

and it is hereby determined:

5. That to the extent that the persons named in subparagraph 1 hereof and the domiciliary personal representatives, heirs, next-of-kin, legatees and distributees, names unknown, of Wilhelm Wappenschmidt, also known as Hubert William Wappenschmidt, William Hubert Wappenschmidt, and William Wappenschmidt, deceased, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country," as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on July 18, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-6849; Filed, Aug. 3, 1950; 8:50 a. m.]

[Vesting Order 14904]

HENRY A. SIEBERN

In re: Trust under will of Henry A. Siebern, deceased. File No. D-28-12620; E. T. sec. 16803.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Augusta Feindt, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the domiciliary personal representatives, heirs-at-law, next-of-kin, legatees, distributees and issue, names unknown, of Marie Meier, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraphs 1 and 2 hereof, and each of them, in and to the trust created under the will of Henry A. Siebern, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

4. That such property is in the process of administration by the Trust Company of New Jersey, as trustee, acting under the judicial supervision of the Bergen County Court, Probate Division, Hackensack, New Jersey;

and it is hereby determined:

5. That to the extent that the person named in subparagraph 1 hereof and the domiciliary personal representatives, heirs-at-law, next-of-kin, legatees, distributees and issue, names unknown, of Marie Meier, deceased, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being

deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on July 18, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-6847; Filed, Aug. 3, 1950; 8:50 a. m.]

[Vesting Order 14905]

REBECKA SIEBERN

In re: Trust under will of Rebecka Siebern deceased. File No. D-28-12621; E. T. sec. 16804.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Augusta Feindt, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the domiciliary personal representatives, heirs-at-law, next-of-kin, legatees, distributees and issue, names unknown, of Marie Meier, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraphs 1 and 2 hereof, and each of them, in and to the trust created under the will of Rebecka Siebern, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

4. That such property is in the process of administration by the Trust Company of New Jersey, as trustee, acting under the judicial supervision of the Bergen County Court, Probate Division, Hackensack, New Jersey;

and it is hereby determined:

5. That to the extent that the person named in subparagraph 1 hereof and the domiciliary personal representatives, heirs-at-law, next-of-kin, legatees, distributees and issue, names unknown, of Marie Meier, deceased, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on July 18, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-6848; Filed, Aug. 3, 1950; 8:50 a. m.]

EMIL OETTINGER AND ROBERT GOLDSCHMIDT

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Emil Oettinger, New York, N. Y.; Robert Goldschmidt, London, England; Claim No. 32691; $45.00 in the Treasury of the United States to each claimant.

Executed at Washington, D. C., on July 31, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 50-6851; Filed, Aug. 3, 1950; 8:50 a. m.]

KARL VIRAG

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Karl Virag, New York, N. Y., Claim No. 42170; $1,310.43 in the Treasury of the United States.

Executed at Washington, D. C., on July 31, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 50-6852; Filed, Aug. 3, 1950; 8:50 a. m.]

TOSHIKO KITAGAWA MORI

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Toshiko Kitagawa Mori, Administratrix of the estate of Yoshio Kitagawa, deceased, San Mateo, Calif.; Claim No. 37223; $8,478.24 in the Treasury of the United States, representing the share of Sotaro Kitagawa in the property vested by Vesting Order No. 6530 as the property of Yoshio Kitagawa.

Executed at Washington, D. C., on July 28, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 50-6850; Filed, Aug. 3, 1950; 8:50 a. m.]

PROF. DR. AUGUST CHWALA

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Prof. Dr. August Chwala, Vienna, Austria; Claim No. 41161; property described in Vesting Order No. 68 (7 F. R. 6181, August 11, 1942), relating to United States Patent Application Serial No. 283,323 (now United States Letters Patent No. 2,356,565).

Executed at Washington, D. C., on July 31, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 50-6853; Filed, Aug. 3, 1950; 8:50 a. m.]

[Vesting Order 14898]

EMILY (AMALIE) CRAMER

In re: Estate of Emily (Amalie) Cramer, deceased. File No. D-28-12754; E. T. sec. 16930.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Heribert Cramer, whose last known address is Germany, is a resident

of Germany and a national of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the person named in subparagraph 1 hereof, in and to the estate of Emily (Amalie) Cramer, deceased, is property payable or deliverable to, or claimed by, the aforesaid national of a designated enemy country (Germany);

3. That such property is in the process of administration by Donald F. Cutler, Jr., as administrator, c. t. a., acting under the judicial supervision of the Probate Court of Plymouth County, Massachusetts;

and it is hereby determined:

4. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on July 18, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-6846; Filed, Aug. 3, 1950; 8:50 a. m.]